

PUBLIC LAW BOARD NO. 2774

Award No. 1
Case No. 1

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
The Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the Carrier violated the Agreement between Atchison, Topeka & Santa Fe Railway Company and its employees represented by the Brotherhood of Maintenance of Way Employees, when Los Angeles Division Trackman J.L. Gonzales was dismissed from service March 14, 1980. Said dismissal being arbitrary, excessive and in abuse of discretion.
2. That the Carrier now reinstate J.L. Gonzales to service with seniority, vacation and all other rights unimpaired, pay for all wage loss and/or otherwise made whole."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The facts involved in this dispute are not in contention. Claimant was charged with being "being insubordinate to duty, quarrelsome and vicious toward Road Master B.L. Draper in his office at Needles, at approximately 7:45 A.M., Friday, February 15, 1980." Following an investigation of the charges indicated Claimant was found to have been guilty by Carrier and dismissed from service.

The facts indicate that on the day in question Claimant was twenty minutes late to work. He was subsequently (ten minutes later) called into the Road Master's office and the Road Master proceeded to admonish him with respect to arriving at work on time rather than being late. Claimant apparently of the opinion that he had been singled out of a number of employees who were late for work on that day, referred to the Road Master as

"a chicken-shit". This was the incident upon which the discipline was based.

Petitioner indicates that there had been discussions with respect to leniency with Carrier concerning this matter. For reasons which are not relevant to this Board's determination, those negotiations were not successful. Petitioner insists that the discipline imposed was wholly disproportionate to the offense and that the claim should be sustained. Carrier, on the other hand, indicates that the record clearly establishes Claimant's responsibility for being insubordinate and quarrelsome toward his supervisor in violation of Carrier rules and that in view of Claimant's previous record, the discipline was wholly appropriate.

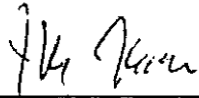
Claimant was employed by Carrier on August 8, 1977. During his tenure the record indicates that he had received a total of thirty demerits for two infractions, being absent from duty without authority and for failure to report for duty. As of the time of the current problem there were a net of twenty demerits outstanding with respect to Claimant. There is no doubt but that Claimant was wholly unjustified in making the comment indicated supra with respect to the Road Master. His feeling that he was being singled out whether or not correct did not justify his conduct. It is an elementary principle that Carrier's disciplinary process and effective management should not condone conduct such as that exhibited by Claimant herein. However, in the Board's view, when Claimant's past record is examined and the nature of the infraction is considered, dismissal was an inappropriate and harsh penalty for the particular infraction. Thus, the Board concludes that Claimant should be reinstated to his former position with all rights unimpaired but receive no compensation for time lost.

AWARD

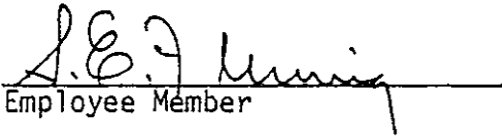
Claim sustained in part; Claimant will be reinstated to his former position with all rights unimpaired but without compensation for time lost.

ORDER

Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I.M. Lieberman, Neutral Chairman



Employee Member



Carrier Member

Chicago, IL, 1981