

PUBLIC LAW BOARD NO. 2774

Award No. 198
Case No. 198

PARTIES
TO
DISPUTE:

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

STATEMENT
OF CLAIM:

"That the Carrier violated the Current Agreement when it dismissed Trackman R. L. Smith. Said action being excessive, unduly harsh and in abuse of discretion.

"That the Carrier reinstate Claimant to his former Carrier position with seniority and all other rights restored unimpaired, with pay for all loss of earnings suffered, and his record cleared of all charges."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees 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.

Claimant was employed as a Trackman, and had been with Carrier since 1973. He was charged with having an altercation with his Foreman on the morning of April 12, 1988. Following an investigation, he was found guilty of the charges, and dismissed from Carrier's service.

The record reveals that on April 12, 1988, while in the process of receiving his work assignment for that morning, Claimant ripped off his shirt, directed abusive and obscene language at his Foreman, and further challenged him to a fist fight, at which time he threatened to "whip your ass." The Foreman did not accept Claimant's challenge, and left the area to call for assistance. This incident was not denied by Claimant at the investigation. In fact, the Claimant did not deny that he was quarrelsome and directed abusive language at his Foreman, and further, he admitted that he did indeed take off his shirt and challenge the Foreman to fisticuffs. Thus, as the Board views it, there is no question whatever with respect to Claimant's guilt in the particular incident on April 12, 1988.

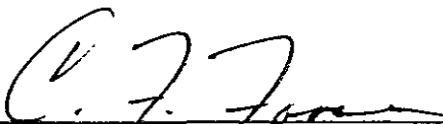
With respect to the penalty of dismissal, Carrier referred to Claimant's prior record as part of the reason for its decision to permanently dismiss him. That record indicated that he had been disciplined on seven prior occasions, which included two prior dismissals. Furthermore, one of the disciplinary incidents involved an altercation with another employee. From the Board's point of view, the particular action dealt with in the investigation, in the light of Claimant's prior record, amply justifies Carrier's decision to terminate him. No employer need condone and live with the kind of behavior exhibited by Claimant on the date in question.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



C. F. Foose, Employee Member



L. Z. Pope, Carrier Member

Chicago, Illinois
September 29, 1989