

Award No. 219

Case No. 219

PUBLIC LAW BOARD NO. 2774

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 provisions of the current agreement particularly but not restricted to Rule 13 and Appendix 11 when it dismissed Southern Region Track Foreman J.E. Clemmons, and suspended Southern Region Trackman M.G. Simmons, on the basis of unproven charges. Said action being unjust, excessive, unduly harsh and an abuse of discretion.
2. That the Carrier shall now be required to reinstate Mr. J.E. Clemmons with seniority and all other rights restored, vacation and benefit rights restored, and compensate pay for time lost beginning May 13 and continuing forward. And Mr. M.G. Simmons be compensated for all time lost beginning April 17 through May 17, 1993.

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.

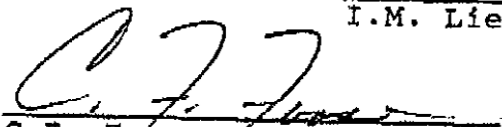
This dispute involves an altercation between the two Claimants named supra. A settlement has been reached between Mr. Clemmons and the Carrier and he has withdrawn his claim. For that reason, this award will deal solely with the issues raised by Mr. Simmons.

The record reveals that the two men had engaged in a serious altercation resulting in injury to Mr. Simmons. It is clear from the testimony at the investigation that Mr. Simmons bears significant responsibility for the initial dispute culminating in the physical confrontation. Further Simmons did not have a good prior record having been previously dismissed. The discipline assessed in this instance, under all the circumstances cannot be considered to have been harsh or unreasonable. It will not be disturbed.

AWARD: Claim denied.



I.M. Lieberman, Neutral Chairman



C.F. Foose
Employee Member



L.L. Pope
Carrier Member

Schaumburg, Illinois
Feb. 24 1995