

PUBLIC LAW BOARD NO. 4021

Award No. 12
Case No. 20

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

1. Carrier's decision to remove Southern Division Trackman H. L. Jones from service effective August 12, 1985, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Jones with seniority rights unimpaired, and compensate him for all wages lost from August 12, 1985.

FINDINGS

This Board, upon the whole record and all the evidence, 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 by Agreement dated November 26, 1985, and has jurisdiction of the parties and the subject matter.

Claimant was employed by the Carrier as a Trackman on March 12, 1984. On August 12, 1985, Claimant was suspended from service pending an Investigation, in connection with a report:

Alleging that you were indifferent to duty, insubordinate, vicious and failed to obey instructions and further withheld the facts regarding the rule violations in connection with an incident that occurred Monday morning, August 12, 1985 . . . so as to determine the facts and place responsibility, if any, involving possible violation of Rules 1, 2, 14, 16 and 17, General Rules for the Guidance of Employees, Form 2626 Standard.

Claimant was discharged from the service following the investigation.

The record shows that Claimant and his Foreman had words on two separate occasions on the date involved. The first occurred at the gang's headquarters location, when Claimant was late for roll call, and the Foreman called out to him to quicken his pace. The Claimant responded in an insubordinate manner, and the Foreman issued an equally salty rejoinder.

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Later that morning, the Foreman assigned Claimant to pull spikes for the tie gang. Claimant went promptly to the designated area, with a clawbar, and prepared to pull spikes. Some twenty minutes later, the Foreman returned, determined that Claimant had pulled no spikes, and asked Claimant what was the problem. Claimant responded with an unsavory and insubordinate remark, and the Foreman advised him that he was out of service, and instructed him to go to the road crossing. Claimant refused, advising the Foreman that she lacked the authority to remove him from service, and he resumed working.

The Foreman called the Track Supervisor, who came to the location to address the matter. The Track Supervisor testified that the Claimant also was argumentative with him, and refused to follow his instructions to leave the property. The Track Supervisor called the Roadmaster, who advised Claimant that he was suspended from service, and the Claimant left the property.

Much of the transcript of the Investigation is devoted to the exact language used by the Claimant, but Claimant readily admits to the language. Claimant's use of the four-letter word is not

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of particular significance to this case. While such language is not generally considered appropriate in most situations, it is well-known that the operation of a track gang is not a Church Social. This is evident in this case, where the Foreman readily admits that she used the same word in her rejoinder to Claimant in the initial altercation.

However, the message Claimant communicated, both to the Foreman and the Track Supervisor, was that he did not believe that he had to follow their instructions. This message was delivered in his words, his tone and his actions, and there, Claimant was wrong. The operation of a Railroad is complex and hazardous by its very nature. It consistently has been held that employees must follow the orders of their supervisors, unless they can show that to do so would place them in physical danger. If employees disagree with the instructions, they must comply first, and grieve later. Here, the Claimant was abusive, disrespectful and insubordinate to the Foreman, as well as the Track Supervisor, and such conduct cannot be condoned.

The Organization argues that the Foreman was "picking on" Claimant because she was angry about the earlier exchange. That may

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or may not be true, and the answer is not to be found in the record; however, the record does make clear that Claimant began the dispute with his inappropriate reply to the Foreman's request that he hurry, that he continued the dispute with his harsh reply to the Foreman's question about what was wrong, and that he crossed the line when he refused to accept the proper orders of the Foreman and Track Supervisor to leave the property.

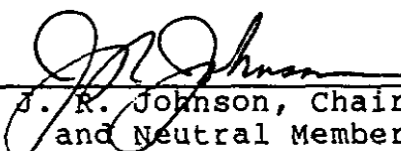
The Board finds that the Claimant was afforded a fair and impartial Investigation. The evidence adduced at that Investigation established that Claimant was guilty of a serious charge, and Claimant's record of a prior similar offense in less than two years' service, supports a finding that discharge was appropriate.

AWARD

Claim denied.


C. F. Foose, Employee Member


L. L. Pope, Carrier Member


J. R. Johnson, Chairman
and Neutral Member

Dated: May 21, 1986