

PUBLIC LAW BOARD NO. 4021

Award No. 13
Case No. 31

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 assess Eastern Lines Welder Helper F. A. Eubanks' record with twenty (20) demerits was unjust.
2. Accordingly, Carrier should be required to remove the twenty (20) demerits from the claimant's record and compensate him him for any wage loss, mileage (150 miles) and expenses incurred as a result of attending the investigation.

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.

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Claimant was employed by the Carrier as a Welder Helper at Gladstone, Kansas, on March 26, 1985, assisting Track Welder May. Claimant was charged with failing to wear his hard hat, standing on a rail, and refusing to comply with the instructions of Track Supervisor Ollek. An investigation was held on April 18, 1985, and Claimant was found guilty of the charges, and assessed twenty demerits on his record.

The Organization contends that Claimant was unable to wear his hard hat because it was a very windy day, that he was standing on the rail in order that he might better observe oncoming trains, and that he did, in fact, comply with the instructions of the Track Supervisor.

The Carrier contends that it was not so windy as to prohibit the wearing of hard hats: that others, including the Track Supervisor and Welder May, were wearing their hard hats at the same time and place. It contends that Claimant admits that he was not wearing the hard hat, and that he was standing on the rail in direct contravention of Carrier's rules. Further, it contends that, if Claimant disagreed with the Track Supervisor's instructions, he should have complied, nonetheless, and grieved later.

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The record clearly demonstrates that Claimant was not wearing the proper safety equipment (the hard hat), as required by the Rules and the instructions of the Track Supervisor. Claimant admits as much, but asserts that "it was too windy" to wear his hat, unless he held it on with his hands, and stated that he was not willing to hold his hat for eight hours. While the Board agrees that an Employee should not be required to stand for eight hours holding his hat, the record contains uncontroverted testimony that everyone else involved was able to wear their hard hats, without any apparent difficulty. It is clear that Claimant did not want to wear the hard hat, and chose to follow his own wishes rather than those of the Carrier.

The second element of the charges is that Claimant violated the Rules by standing on the rail. Claimant asserts that he was better able to observe oncoming trains from the vantage point of the rail, and, therefore, was merely doing his job to the best of his ability. This Carrier has a Rule which warns employees of the danger of standing on rails, and forbids them so doing. Every Railroad employee, whose duties take him to the tracks, is made

aware of this Rule, because rails are slippery. This Rule is for the Employee's own protection, and the Employer has the right, if not the obligation, to protect its employees. Claimant is not the first Employee to stand on a rail, and he is not the first to be disciplined for that action. The Board finds that the Claimant violated the Rules.

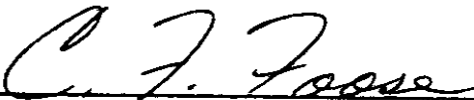
As stated above, the Board finds that Claimant was guilty of violating several Carrier Rules. These offenses alone justify the twenty demerits assessed against Claimant's record. Therefore, it is unnecessary to discuss the remaining charge of Insubordination, except to note that the record contains ample evidence to prove that Claimant was, in fact, insubordinate and disrespectful to the Track Supervisor as charged.

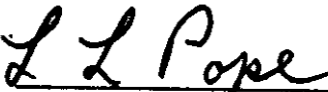
The Board finds that the Claimant was afforded a fair and impartial Investigation, that the record contains sufficient evidence to support a finding of guilt, and that the discipline assessed was warranted.

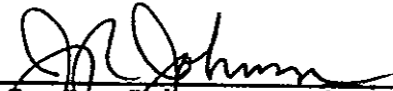
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AWARD

Claim denied.


C. F. Foose, Employee Member


L. L. Pope, Carrier Member


J. R. Johnson, Chairman
and Neutral Member

Dated: June 24, 1986