

PUBLIC LAW BOARD NO. 4021

Award No. 14
Case No. 13

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 disqualify Claimant F. A. Eubanks from service, effective May 2, 1985, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Eubanks with seniority rights unimpaired, and compensate him for all wages lost from May 2, 1985.

FINDINGS

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated November 26, 1985, and has jurisdiction over the parties and the subject matter.

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Claimant was employed by the Carrier as a Welder Helper on March 27, 1985, when Roadmaster Rush came to his work location, to discuss certain events of the previous day, which were reported to him by Track Supervisor Ollek. The events, which are the subject of Award No. 13 of this Board, were Claimant's failure to wear a hard hat as required, Claimant's standing on a rail, and his indifference to duty.

Upon his arrival at the work location, Roadmaster Rush observed the Claimant lying between the tracks, with his shoulders resting on the rail. He instructed Claimant to stand, and Claimant complied. The Roadmaster called the Dispatcher to obtain track time and limits, and returned to find Claimant again lying between the tracks. He instructed Claimant to stand, and Claimant complied. The Roadmaster instructed Claimant to accompany him to discuss the events of the previous day, and Claimant declined, asserting that it was unsafe to leave Welder May working unprotected.

After some discussion, Welder May stopped working, and Claimant and the Roadmaster talked. According to the testimony of Roadmaster Rush, Claimant stated that the Rules were both useless and

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needless. The Roadmaster relieved Claimant of flagging duties, and, the Claimant was charged with indifference to duty, being argumentative, and placing himself in an unsafe position (between the tracks) on the date involved.

An investigation was held on April 18, 1985, with the result that Claimant was disqualified as a Welder and a Welder Helper. The Organization challenges the Carrier's action on several bases. It raised a procedural objection to the Notice of Investigation, asserting that it was not sufficiently specific. It further asserts that Claimant should not have been disqualified, because the fact that he had performed the duties of the positions for nine years, without prior indication of unsatisfactory performance, is prima facie evidence that he is, in fact, qualified. Finally, the Organization contends that the Carrier violated Agreement Rules 8, 13, and others dealing with disqualification and discipline.

With respect to the specificity of the Notice of Investigation, the Board finds that the Notice was adequate, and complied with the requirements of the agreement. It provided Claimant with the

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time, date and place of the alleged infractions; cited the Rules which allegedly were violated; and stipulated that the Investigation was concerned with:

. . . your alleged indifference to duty and Mr. Eubank being argumentative and placing himself in an unsafe position on March 27, 1985, when laying down between the main track rails at the east siding switch, Florence.

The Notice was clear and concise, and provided the Claimant and the Organization with sufficient information to enable it to prepare its answer to the charges. The objection is denied.

With respect to the merits of the case, the record reveals that the Claimant's primary duty on the date involved was to protect the Welder from oncoming trains while he was welding and unable to watch for himself. The Claimant had assumed a posture and position which was contrary to the Rules, and more importantly, not conducive to the early observance of oncoming trains and/or equipment. There is some dispute whether Claimant was lying or sitting between the tracks, but it is clear that neither position was appropriate. Claimant asserts that he could see better from

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that position, and the Carrier points out that he made the opposite assertion with respect to standing on the rail in Case No. 13. The Board agrees that Claimant cannot argue both ways, and, it is a fact that both standing on and lying (or sitting) between rails is prohibited by Carrier's Rules.

The record makes it clear that the Claimant is unwilling to follow Carrier's requirements for the performance of his duties. He has demonstrated a contempt for the Rules, and has made it clear that, unless he sees the value of or need for a Rule, the Carrier cannot be assured that he will comply. The Board finds that the Claimant was guilty of violation of Carrier's Rules, and that his attitude with respect to the Rules is inappropriate for his retention in the service.

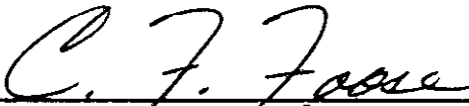
The final issue is whether the Carrier used the proper method of removing Claimant from service. The Organization argues that this is not a proper case for disqualification, since Claimant's nine years of service indicates that he was qualified to perform the duties of the position. Indeed, the facts would seem to indicate that Claimant had been qualified to perform the job, and

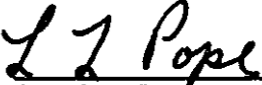
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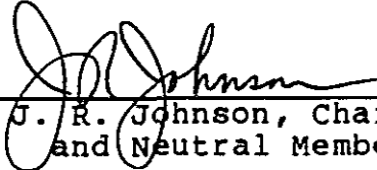
that he knew and understood the Rules and requirements attendant thereto. However, it is equally clear that he chose to ignore those Rules, and perform the duties of the position as he deemed appropriate. In essence, the argument can be reduced to whether it was more appropriate to discharge the Claimant rather than disqualify him. Perhaps so; however, it is of no import in this case. Claimant was accorded a fair and impartial hearing, and all other rights prescribed in the Agreement, and the record is clear that either penalty had the same effect. The Board finds that the action of the Carrier was appropriate.

AWARD

Claim denied.


C. F. Foose, Employee Member


L. L. Pope, Carrier Member


J. R. Johnson, Chairman
and Neutral Member

Dated: June 24, 1986