

PUBLIC LAW BOARD NO. 4021

Award No. 36

Case No. 36

PARTIES
TO
DISPUTE

The Brotherhood of Maintenance of Way Employees

and

The Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM

1. The Carrier's decision to assess Claimant Arthur Sanders twenty (20) demerits after investigation August 14, 1986, was unjust.
2. Accordingly, the Carrier should now be required to expunge twenty (20) demerits from Claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation on August 14, 1986,, because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates Claimant is guilty of violation of the rules he was he was charged with in the Notice of Investigation.

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.

-2-

Claimant was employed by the Carrier as a trackman with the tie gang. On July 17, 1986, a controversy erupted between Claimant and two of his supervisors. The incidents were unrelated, and the Claimant was charged with the violation of two rules in connection therewith. He received twenty demerits following a formal Investigation which was held on August 14, 1986.

According to the testimony adduced at the Investigation, student Foreman Nulick instructed Claimant to work faster and to utilize the proper tools, but Claimant failed to do so. He asserted that the Claimant was delaying the operation. Claimant and a co-worker testified that Claimant was working properly, and that the Student Foreman was in error. They testified that the principal objection of the Student Foreman was that Claimant was using his foot to insert plates, rather than the bar designed for that purpose. However, according to their testimony, the student foreman himself was unable to insert the plate using the bar, and this testimony was not refuted during the investigation. Therefore, the Board finds that insufficient evidence was adduced to find the Claimant guilty of that charge.

-3-

With respect to the second charge, Foreman Looman testified that he instructed the gang to work faster, and quit talking, and then he walked away. However, after walking approximately 132 feet, he turned, and observed the following:

. . . At that particular point, I looked up, he (the Claimant) had his buttocks in the air, with his pants pulled down to his ankles and was making an obscene gesture at me.

The Foreman further testified that Claimant was performing this maneuver "about a foot and a half, two feet off the track." The Claimant explains that he was relieving himself far to the side of the track, and meant no disrespect to the Foreman. There is a conflict in evidence.

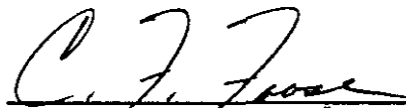
The Board has often held that conflicts in testimony may best be resolved by the hearing officer, because he may observe the demeanor of the witnesses, and better determine their credibility. It is clear that he chose to believe the Foreman in this case, and absent a showing of bad faith, it is his prerogative. There is no such showing here, so we will support his conclusion.

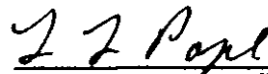
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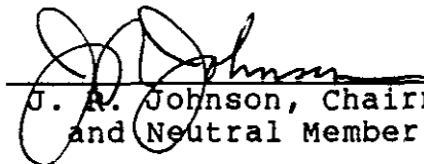
In view of the serious nature of the offense, the discipline of twenty demerits was not excessive. Foremen and other supervisors must be given basic respect if they are to discharge their duties as required by the Carrier. While there is some latitude given in track gangs, the Claimant's conduct clearly surpassed reasonable bounds. The Claimant was guilty, and the discipline was warranted.

AWARD

Claim denied.


C. F. Foose, Employee Member


L. L. Pope, Carrier Member


J. A. Johnson, Chairman
and Neutral Member

Dated:  20, 1987

