

Award No. 167
Case No. 168

PUBLIC LAW BOARD NO. 4244

**ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.
AND
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

STATEMENT OF CLAIM: Carrier's decision to suspend Coast Lines Welder Helper C. A. Nelson from service for 90 days and restrict his seniority to trackman for six (6) months was unjust.

Accordingly, Carrier should be required to compensate Claimant Nelson for all wages lost during the disciplinary period.

FINDINGS: This Public Law Board No. 4244 (the "Board") finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and the subject matter involved.

In this dispute former Coast Lines Welder Helper C. A. Nelson (the "Claimant") was notified to attend a formal investigation on September 14, 1994, concerning his alleged entering into an altercation with Carrier employee F. W. Fernow, Jr. on August 31, 1994, which resulted in injuries to Nelson, in possible violation of Rules A, B, 1007 and 1008 of the Carrier's Safety and General Rules for All Employees. As a result of the investigation, the Carrier determined that the Claimant violated the cited rules. The Claimant was further advised that he was issued 90 days suspension, and upon his return to service after the suspension, he would be allowed to work only as a trackman for a period of six months.

In summary, the testimony of record established that on August 31, 1994, Foreman F. W. Fernow, Jr., approached the Claimant as he was completing a weld on the main line. The Claimant and Fernow engaged in a conversation during which the Claimant complained about the work and his supervisors, including Fernow. A verbal confrontation between the two then escalated into a physical altercation when Fernow grabbed the Claimant in a "bear hug". As Fernow carried Nelson away from the main line, Fernow stumbled, causing the two to fall to the ground. When they hit the ground, they began striking each other until the altercation was broken up by Foreman A. Lugo and other employees. After the two were separated, the Claimant continued his verbal attack against Fernow.

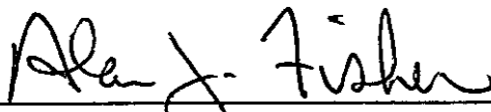
4244


Award No. 167

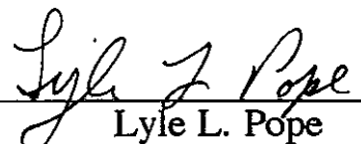
Page No. 2

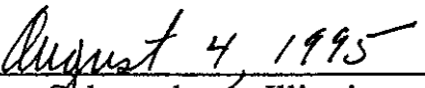
There is no dispute that the Claimant entered into an altercation with Foreman Fernow while on duty in violation of the cited rules. After reviewing the evidence of record as well as the Claimant's personal record, it is the Board's opinion that the discipline assessed by the Carrier was not excessive. In fact, Rule 1007 states that any act of hostility is sufficient cause for dismissal. Thus, the Board finds no basis to set aside or reduce the discipline.

AWARD: Claim denied.


Alan J. Fisher
Chairman and Neutral Member


C. F. Foose
Organization Member


Lyle L. Pope
Carrier Member

Dated: 
Schaumburg, Illinois