

Award No. 177
Case No. 182

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: Carrier's decision to remove former Southern Region Seniority District No. 2 Trackman A. L. Yarbough from service, effective February 28, 1995, was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from February 28, 1995.

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 Trackman A. L. Yarbough (the "Claimant") was notified to attend a formal investigation on February 13, 1995, concerning his alleged altercation with Foreman L. D. Hope on February 6, 1995, in violation of Rules 1.1, 1.6, 1.7 and 1.9 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 issued a Level 6 dismissal from service.

In summary, the testimony of record established that at approximately 11:35 a.m., on February 6, 1995, the Claimant, who had been suspended from service on February 5, 1995, pending an investigation for an incident that occurred on February 3, approached Foreman Hope in the parking lot of a local diner where the crew had gone for lunch. In the presence of several other crew members, the Claimant threatened to assault Hope in the parking lot. As Hope walked away from the Claimant, the Claimant followed Hope and the crew members into the diner, where he again threatened Hope with physical harm.

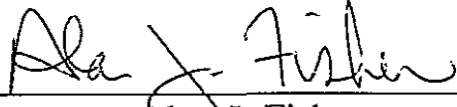
The Claimant testified that he was going to the restaurant on February 6, to have lunch when by chance Foreman Hope and several crew members arrived at

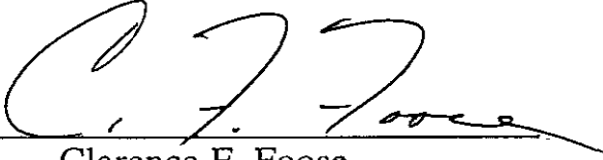
the diner. The Claimant further testified that upon his arrival, Hope greeted him with a raised index finger, an obscene gesture, and laughed at him. The Claimant believed that Hope was trying to antagonize him because of the Claimant's disciplinary problem resulting from the Claimant's failure to report for work on February 3. The Claimant alleged that Hope's actions were a deliberate attempt to provoke him and get him fired.

The record further shows that Hope rebutted the Claimant's testimony. Contrary to the Claimant's testimony, Hope stated that he was not aware of the Claimant's most recent disciplinary problem; he made no obscene gesture with his index finger towards the Claimant; nor did he have any reason, or intention, to provoke the Claimant.

After reviewing the record, the Board finds that the testimony of Foreman Hope and the other Carrier's witnesses to be more credible than the Claimant's testimony. Furthermore, the Board finds no merit to the Claimant's allegations that Hope provoked the Claimant on February 6, thereby excusing the Claimant's violation of the Carrier's rules. Thus, in view of the Claimant's personal record, there is no basis to set aside or reduce the discipline.

AWARD: Claim denied.


Alan J. Fisher
Chairman and Neutral Member


Clarence F. Foose
Organization Member


Greg Griffin
Carrier Member

Dated: 2/15/96
Schaumburg, Illinois