

PUBLIC LAW BOARD NO. 4244

Award No. 195
Case No. 200

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

-and-

**THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY**

Statement of Claim:

1. Carrier's decision to suspend Southern Region Seniority District No. 1 Trackman W. L. Glasby from service for the period September 1 through and including October 16, 1994, was unjust.
2. Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost during the aforementioned period. (Files 94-11-142/80-13A2-942)

INTRODUCTION

This Board was duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Act, 45 U.S.C. Section 153, Second. This matter came on for hearing before the Board on September 9, 1996, in Chicago, Illinois. The Board, after hearing and upon review of the

entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Railway Labor Act ("Act"), as amended.

FINDINGS

Claimant, trackman Wilbur L. Glasby, was removed from service pending an investigation into charges he violated Safety and General Rules B, L, 1007 and 1008, arising from a confrontation with his track foreman, Jim E. Bean, on September 1, 1994. Claimant was suspended from service for forty-five days after an investigation conducted on September 21, 1994.

On the date of the incident, the claimant's gang was laying welded rail on the Oklahoma and Enid Subdivisions. The gang foreman approached the claimant, and instructed him to drive down two high spikes. The claimant had a spike mall in his hand, and at the time of the instruction he was situated within several feet of the two spikes. The claimant responded that he would not drive the spikes until he had finished performing other assigned work. The foreman requested claimant drive down the spikes a second time, and claimant replied he would not do so until he had finished the installation of anchors. The foreman overheard claimant complaining to another employee that the foreman's actions constituted harassment.

The claimant approached a track supervisor, J. R. Bales, to complain about the incident, and stated that the foreman was "picking on him." Bales signaled for the foreman

to approach, and offer his explanation of what had occurred. After the claimant described his version of events, including a denial that he refused to drive the spikes, the foreman stated to the track supervisor the claimant was incorrect. Claimant asked whether the foreman had called him a liar, and he proceeded to grab the foreman's overalls with one hand and raise his other hand in a fist. The track supervisor instructed claimant to release the foreman which he did immediately.

The foreman testified the crew had been at the work location for approximately one week. He described the tension at the work site as "bad," and stated that there was "a lot of pressure on everybody, myself and the laborers too" The foreman acknowledged he did not feel the claimant intended to hurt or harm him in any way. In fact, both employees knew each for twenty-one years, and the foreman testified they had each visited the other employee's home. Bean suggested on cross-examination that had the track supervisor not been present, he would have worked through the conflict with the claimant; the incident was essentially a misunderstanding.

The claimant admitted he grab the foreman's overalls, but only after he was provoked and the foreman declared he was going to make the claimant mad, a charge the foreman admitted on cross-examination.

The Board, upon consideration of the entire record, finds that the claimant was quarrelsome and entered into an altercation with his foreman in violation of Rules 1007 and 1008 on September 1, 1994. The Board further finds that while claimant improperly grabbed

the overalls of his foreman, the evidence, including the foreman's own perception of the event, the admission he intended to provoke the claimant, and claimant's conduct, fail to support a finding that claimant intended to harm the foreman. Regardless of the working conditions in the field at the time of the incident, however, the claimant's conduct was inappropriate. While the Board finds the penalty assessed to be unwarranted when the totality of the events which transpired between the claimant and his foreman are evaluated, the claimant bears responsibility for his improper conduct, and appropriate discipline is justified. Accordingly, the Board determines the discipline shall be reduced to a five (5) day suspension, as more fully set forth in the Award, below.

AWARD

The claim is sustained, in part, as follows. The claimant's suspension is reduced to a five (5) day suspension, and he shall be compensated for the net wage loss suffered as a result of the balance of the suspension served from September 1, 1994, to October 16, 1994, with his seniority rights unimpaired. Claimant's personnel record shall contain the terms of this Award.


Greg Griffin, Carrier Member


Clarence F. Foose, Employee Member


Jonathan I. Klein, Neutral Member

Award issued the 20th day of November, 1996.