

PUBLIC LAW BOARD NO. 4244

Award No. 225

Case No. 231

File No. MWE980106AA

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(**BROTHERHOOD OF MAINTENANCE**
(**OF WAY EMPLOYEES**
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Parties to Dispute: (

(**-and-** (

(**BURLINGTON NORTHERN SANTA FE RAILWAY**
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Statement of Claim:

1. The Carrier violated the Agreement when it unjustly suspended Mr. F. G. Luna from service for thirty days in connection with his alleged violation of Rule S-28.6- Conduct and S-28.7- Altercations, of the Safety Rules and General Responsibilities of All Employees, effective March 1, 1997, in connection with a verbal altercation at Mountainair, New Mexico on October 29, 1997.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be paid for all time lost, and the discipline removed from his record.

INTRODUCTION

This Board is duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45 U.S.C. Section 153, Second. This matter came on for consideration before the Board pursuant

to the expedited procedure for submission of disputes between the parties. 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 Act, as amended.

FINDINGS

On October 29, 1997, the claimant, F. G. Luna, was assigned as a track supervisor on the Mountainair, New Mexico section. The case at issue centers around a verbal altercation which occurred between the claimant and section foreman, A. G. Verdugo. On October 29, 1997, an employee of Auto-Truck was repairing the Mountainair section truck. This repair work prevented Verdugo and his crew from promptly departing for their work assignment. The claimant arrived on the scene at approximately the same time that the repair work on the section truck was completed. The claimant approached Verdugo and his crew (G. Gonzalez, C. D. Rael, and A. P. Zubia) as they were departing in the truck.

A verbal altercation ensued between the claimant and Verdugo, who was seated in the front passenger seat of the truck. The altercation involved the use of the word "baboso" by the claimant, which was directed towards Verdugo. As a result of this incident, the Carrier directed the claimant to attend an investigation to develop the facts and place responsibility, if any, in connection with possible violations of Rules S-28.6 and S-28.7 of the Safety Rules and General Responsibilities for All Employees.

As a result of the investigation, the claimant was issued a level S suspension of thirty days for violating Rules S-28.6 and S-28.7 of the Safety Rules and General Responsibilities for All Employees for his responsibility in connection with a verbal altercation with foreman Verdugo. The Board finds that the discipline received by the claimant must be modified for the following reasons.

The following Rules are applicable to the Board's decision in this case. Rule S-28.6- Conduct of the Safety Rules and General Responsibilities for All Employees provides:

Employees must not be:

1. Careless of the safety of themselves or others
2. Negligent
3. Insubordinate
4. Dishonest
5. Immoral
6. Quarrelsome or
7. Discourteous

Rule S-28.7- Altercations, provides: "Employees must not enter into altercations with each other, play practical jokes, or wrestle while on duty or on railroad property."

The investigation reveals that the claimant was yelling and shouting at foreman Verdugo as the crew was departing for their assignment. Besides Verdugo, three Carrier witnesses (Gonzalez, Rael, and Zubia) testified that the claimant was indeed angry and shouting at Verdugo in a hostile manner. Although the claimant denies that he was angry or shouting, he does admit to calling Verdugo a "baboso." The investigation reveals that the Spanish word "baboso" translated into English is defined to mean: "idiot; stupid; drooling; or running-at-the-mouth," depending upon the particular interpretation by an individual.

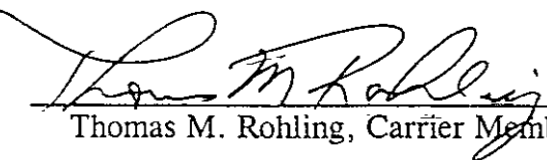
Therefore, regardless of the varied interpretations, "baboso" is generally derogatory in nature.

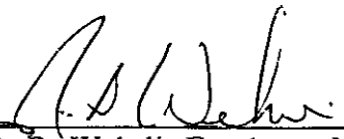
The claimant should have taken a more controlled and calm approach when discussing his differences with Verdugo. The Board finds that the claimant was quarrelsome and discourteous towards Verdugo as a result of the verbal altercation. Therefore, the Carrier has satisfied its burden that the claimant violated Rules S-28.6 and S-28.7 of the Safety Rules and General Responsibilities for All Employees.

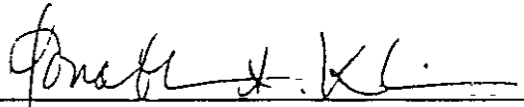
However, the Board believes that the claimant's thirty-day suspension is excessive and unreasonable under the circumstances of this case. The claimant's testimony reveals that he used the word "baboso" because he believed Verdugo was "running his mouth," and not because he thought Verdugo was an idiot. The record before the Board shows the claimant's use of "baboso" was slightly less derogatory than other interpretations. Moreover, the claimant has been suspended only one other time (fifteen years ago) during his approximately twenty-five years of service with the Carrier. Accordingly, the period of claimant's period of suspension is modified as set forth in the Award.

AWARD

The claim is sustained, in part, as follows. The claimant's thirty (30) day suspension is modified to a suspension of ten (10) days. The Carrier is directed to comply with this Award within thirty (30) days of the date of issue.


Thomas M. Rohling, Carrier Member


R. B. Wehrli, Employee Member


Jonathan I. Klein, Neutral Member

This Award issued the 7th day of October, 1998.