

Award No. 76
Case No. 79

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.
TO THE) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

STATEMENT OF CLAIM: That the Carrier's decision to assess Claimant Gilbert Louis a 30-day deferred suspension after investigation January 14, 1991 was unjust.

That the Carrier now expunge the 30-day deferred suspension from Claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation January 14, 1991, because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates Claimant is (not) guilty of violation of rules he was charged with in the Notice of Investigation.

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 Central Region Welder Gilbert Louis (the "Claimant") was notified to attend a formal investigation at Belen, New Mexico on January 3, 1991 concerning his alleged failure to follow the instructions of Welding Supervisor J. E. Mayhill when he replaced a defective weld at M.P. 834.7 with a 1 3/4-in. wide gap thermite weld on December 11, 1990 in possible violation of Rule 1044 of the Carrier's Rules Maintenance of Way and Structures. The investigation was postponed and held on January 14, 1991. Pursuant to the investigation the Carrier determined that the Claimant performed an improper weld and he was assessed a 30-day deferred suspension.

The evidence of record showed that on or about November 9, 1990, the Claimant participated in a demonstration concerning the proper use of a wide gap weld. The demonstration included specific instructions that a wide gap weld could not be used to cut out a defective weld. The demonstration was conducted by Welding Supervisor J. E. Mayhill. Accordingly to Mayhill's testimony, the Claimant, like other Carrier welders, must be qualified to make independent decisions while in the field because supervisors and employees must rely upon the welder's expertise.

It is undisputed that the record also shows that on December 11, 1990 at MP 834.7, the Claimant made a wide gap weld to cut out a defective one-inch thermite weld. The Claimant testified at the formal investigation that he knew that the wide gap weld was not the proper weld and contrary to Mayhill's instructions, but he did the repair pursuant to the specific instructions of Track Supervisor Felipe Luna. He also stated that he did not inform Luna that Luna's instructions were incorrect. It was the Claimant's position that he made the wide gap weld because as a welder he took instructions from the track supervisor as well as the welding supervisors. Further, the Claimant alleged that on a previous occasion he had informed Luna that it was improper to make a wide gap weld to cut out a defect similar to the one involved in this case.

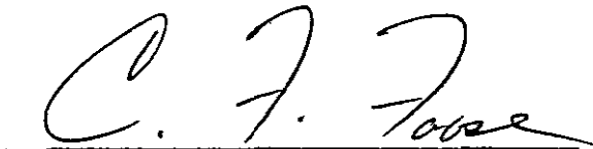
Based on the evidence and testimony of record the Board finds that the Claimant failed to follow the instructions of Welding Supervisor Mayhill on December 11, 1990 as alleged. The Claimant had an absolute responsibility to inform Luna of his incorrect instruction to do a wide gap weld. Accordingly, the Board finds that a deferred suspension is appropriate discipline.

However, the Board finds that if the deferred suspension is activated, 30 days would be excessive. The Claimant's personal file shows that he has over 35 years of service and no outstanding demerits. Moreover, it is impossible to ascertain from the Carrier's documents summarizing the Claimant's employment record when the Claimant had been disciplined in the past and for what reasons. Moreover, the record suggests that the Claimant has received an average of only six demerits a year. Using this data, it would be excessive discipline for him to serve 30 days. Thus, the discipline is reduced to a 10-day deferred suspension.

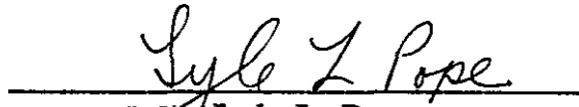
AWARD: Claim sustained as set forth above.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: March 28, 1991