

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

(1) The discipline (30 days suspension) assessed Section Foreman D. W. Key for alleged violation of various company rules as indicated in Mr. G. W. Thompson's letter of July 1, 1988, was arbitrary, capricious and unwarranted.

(2) The claimant's record shall be cleared of the discipline referred to in Part (1) hereof and he shall be compensated for all time lost.

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation at Idaho Falls, Idaho on June 14, 1988 to develop the facts and determine his responsibility for an altercation with a member of Section Gang 6101 which resulted in an alleged personal injury to Sectionman C. H. McClure in possible violation of Rules A, B, D, H, I, L, 607 and 608 as found in Form 7908, "Safety, Radio and General Rules for All Employees.

Pursuant to the investigation the claimant was found guilty and was assessed thirty days suspension.

The Board has studied and reviewed the transcript of record. D. J. Kula, Manager Track Maintenance, testified that claimant and Sectionman C. H. McClure were under his supervision on the date in question. He testified that he interviewed the gang, consisting of the claimant, C. H. McClure, Sectionman Carl Kluesner and Sectionman R. D. Holm.

Mr. Kula testified that the claimant stated he did not shake Mr. McClure, but Mr. McClure said that he did. The other two members of the crew said they did not see the foreman shake Mr. McClure. Mr. Kula stated that he removed both employees from service until the facts could be determined in an investigation.

Sectionman C. E. Kluesner testified that he was a member of the gang on June 6, and all members of their crew were treated equally, and he had never seen Foreman Key and Mr. McClure arguing or entering into any type of altercation previously.

Mr. Kleusner further testified that he did not see the claimant grab Mr. McClure, nor did he see Mr. McClure being pushed back or backing away from the claimant. He further stated that he did not see anything which would indicate an altercation was beginning or was going to take place.

The claimant testified that he gave instructions to Mr. McClure and then had to follow up with further instructions. He testified that after getting the immediate job done, he started to walk away when Mr. McClure used some vulgar language toward him, and he turned and asked him to repeat it, which he did. He then testified that Mr. McClure put his hands up, and he pushed them aside two or three times. He testified that he never threatened Mr. McClure in any way. He stated that he and Mr. McClure had never argued at any time previously, and he had never threatened any employee, either verbally or physically.

The claimant testified that at 9:35 a.m. Mr. McClure told him his back was hurt, and when Mr. McClure started to perform more work, he told him not to do so and go sit in the truck. He stated that shortly thereafter he took Mr. McClure to a doctor.

The claimant testified that he heard Mr. McClure talking to the doctor, and he said: "When he grabbed me, he hurt my back." The claimant testified that at no time did he grab Mr. McClure, his arms, wrist or anywhere.

Sectionman McClure testified that the claimant had given him some instructions, and he attempted to carry them out but apparently not to the satisfaction of the foreman. He stated that he asked the claimant: "What's the problem?" and the claimant replied: "I'm G-- D--- tired of you bullying" and repeated this again, and then he told the claimant that his big ass didn't worry him a bit or don't scare him, or something to that effect.

Mr. McClure testified that at this time the claimant came back to him, and he could see the claimant was going to grab him so he put his hands up, and the claimant grabbed his wrists, both of them, and said: "Old man, I ought to hit you." He stated that the foreman said this two or three times and that he then told the claimant: "If you do, it will be the last guy you ever hit."

Sectionman McClure testified that the claimant had treated him good prior to this incident. Mr. McClure also testified that he had never been treated for a particular back injury.

Mr. McClure testified that as the claimant approached him, he was kind of bringing his hands back and forth in front of him, put them up just as he got to him, and he (McClure) threw his hands up kind of in front of him but did not make a fist.

The Union contended there was pre-judgment in this case. After a review of all the testimony the Board finds there is no basis for such a finding.

The evidence fails to establish that the claimant herein grabbed or shook Mr. McClure. The evidence further indicates that the claimant did make physical contact with Mr. McClure by brushing his hands aside two or three times. The Board seriously questions whether any injury resulted, but regardless of that fact, the foreman should not have made physical contact with any of his men.

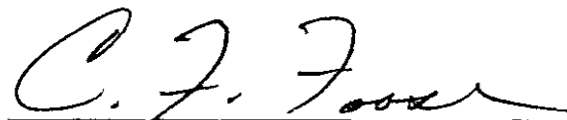
While the Board might not have assessed thirty days suspension for such an act, it is not the Board's prerogative to determine whether discipline is proper. The authority of the Board is to determine if the discipline assessed by the Carrier is harsh, arbitrary or unjust.

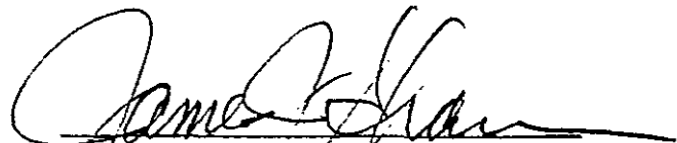
Under the circumstances herein it is the finding of the Board that there is no justification to overrule the decision of the Carrier.

AWARD: Claim denied.

DATED: September 29, 1988


Preston J. Moore, Chairman


Union Member


Carrier Member