

PUBLIC LAW BOARD – NO. 6461

Case No. 1

Award No. 1

PARTIES

Brotherhood of Maintenance of Way Employees

To

-and-

DISPUTE:

Grand Trunk Western Railway

STATEMENT OF CLAIM:

**Appeal of the discipline of dismissal imposed
on Daniel Petrous on March 15, 2001.**

FINDINGS: On February 22, 2001, the claimant was given a notice charging him with the following offense:

“Alleged charge and violations stem from an incident that occurred on February 21, 2001 at approximately 1500 hours at or near M.P. 7.8 #2 track, Holly Subdivision, when you allegedly failed to follow instructions from, were insubordinate to, and became quarrelsome, discourteous, negligent, careless and refused to comply with a direct order from your immediate supervisor, Assistant Foreman, Derico Irby when you threw a company tool at Mr. Irby striking him with the tool.”

During the claimant's March 5, 2001 hearing, Mr. Irby testified that on the date of the incident, he instructed the claimant to perform a task (lifting a joint onto the track with a jack) with another employee (C. Rivas) and that he refused to comply with his directive. He stated the claimant told him that the assigned task wasn't his job, and he began to scream at him and used profanity and, subsequently threw a track fork at him striking him in the shins of both legs. Mr. Irby testified a Signal Maintainer who was sitting in his truck facing the area where the incident occurred witnessed the incident.

Conversely, in his defense, claimant gives an entirely different version of what transpired between him and Mr. Irby. He contends that he was not insubordinate and

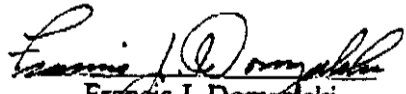
because there was oil on his gloves, the track fork slipped from his hands as he threw it down in front of him. He states he had no intention of hitting anyone.

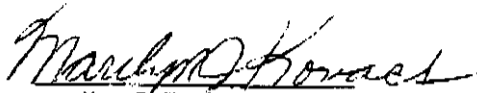
The testimony of Trackman C. Rivas, the other employee who was working with the claimant, did not contribute any substantive information as to what transpired between Mr. Irby and the claimant. However, he did confirm the fact that a Signal Truck was approximately 25 feet from their work location. It is interesting to note that Mr. Rivas testified at page 46 of the hearing transcript, that the claimant had called him the night before the hearing and asked him to say, "the gloves had a lot of grease". When asked if the claimant was asking him to lie, Mr. Rivas responded, "Yes, I think so".

The only witness who saw the entire confrontation was Signal Maintainer Eric Claybaugh. He testified that he was approximately 20 feet away sitting in his truck facing their work location, when he saw the claimant throw a ballast fork at Mr. Irby that struck him in the shins. He further stated that from his observation it was his opinion, the claimant purposely threw the ballast fork at Mr. Irby.

Given the established facts of this case, we do not find the claimant's testimony as being credible. Further, based on the eyewitness statements, we find the claimant's physical confrontation was clearly unwarranted and could have led to grave consequences. Accordingly, it is evident from our reading of the record that there is substantial evidence to support the Carrier's determination, and, in light of claimant's prior discipline record, we will not disturb the Carrier's disposition in this case.

AWARD: The claim is denied.


Francis J. Domzalski
Neutral Member


Marilyn J. Kovacs
Carrier Member


Perry K. Geller, Sr.
Organization Member

Dated: 1-17-02