

PUBLIC LAW BOARD 6856
AWARD NO. 4

Parties to Dispute: The BNSF Railway Company
and
United Transportation Union

Statement of Claim: Claim is made on behalf of Conductor G. Harris for reinstatement to service with pay for all time lost and all notations removed from his personal record.

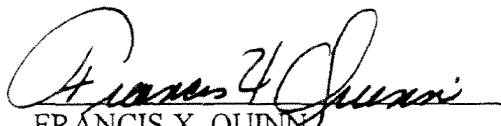
Findings: On December 6, 2004, Claimant and Engineer J.W. League and Brakeman R.F. Kitchens were operating between Teague, Texas, and Alliance, Texas. Claimant Harris and Engineer League became engaged in a heated disagreement over Engineer League's handling of the train, specifically, the applicability of slow orders over certain bridges. Engineer League stopped the train, left his seat, and moved toward Claimant Harris. Mr. Harris defended himself and struck Engineer League. Following the incident, the crew was removed from the train and an investigation began. Claimant was charged with violation of the General Code of Operating Rules 1.1 (Safety), 1.4 (Carrying Out Rules and Reporting Violations), 1.6 (Conduct), and 1.7 (Altercation).

Conductors and engineers are jointly responsible for knowing and not exceeding the authorized speed over bridges. The Claimant had been admonished for not asserting his role as conductor on September 26, 2004 (See Award 3 of

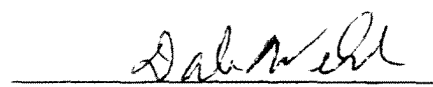
this Board). Now when he does he is challenged physically by the engineer. The record indicates that Claimant defended himself - albeit with four pre-emptive blows to the attacking engineer. Individuals who engage in violent behavior are subject to disciplinary action. The record in this case indicates Claimant was the defender not the provocateur of the assault.

Based on the record, we conclude Carrier had reason to invoke discipline for the participation in an altercation. However, due to the mitigating circumstances of having to defend himself in an attack, we conclude that the penalty is too severe. Claimant is returned to work but without back pay.

Award: Claim sustained in part.


FRANCIS X. QUINN
Chair and Neutral Member


GENE L. SHIRE
Carrier Member


G. DALE WELCH
Organization Member

 2, 2005
Fort Worth, Texas