

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040

Case No. 18

PARTIES: SOO LINE RAILROAD COMPANY
TO :
DISPUTE: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Appeal of Claimant Kurtney W. Aukland's five (5) working day deferred suspension, with a one-year probationary period.

FINDINGS:

On November 24, 1993, the Claimant was notified by the Carrier that subsequent to a formal investigation, he had been found guilty of improper behavior when he allegedly directed racial jokes at another Carrier employee, one C. E. Beamon. Taking into consideration that the Claimant offered his apologies and they were accepted, the Claimant was assessed a five working day deferred suspension from service with a one-year probationary period.

On December 6, 1993, the Claimant advised the Carrier of his intention to appeal the discipline under the provisions of the Agreement of June 1, 1990.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of improper behavior in directing a racial joke toward another employee. Although the Claimant seems to argue that everybody "joked around" and his action on the date in question was simply part of that group behavior, the record is clear that the person to whom

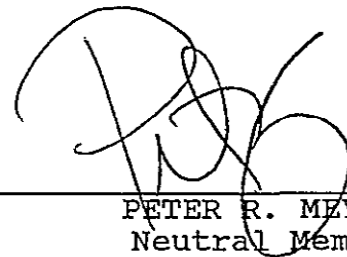
this racial remark was directed did not find the remark to be "welcome". It is fundamental that the "unwelcome" nature of this type of language is the determining factor; and in this case there is no question that the language of the Claimant was "unwelcome" to Mr. Beamon.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

In the case at hand, the Claimant received discipline of a five-working day deferred suspension and a one-year probationary period. Given the serious nature of the wrongdoing in this case, this Board cannot find that the action taken by the Carrier was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD:

Claim denied.



PETER R. MEYERS
Neutral Member

Dated: 1/12/94