

PUBLIC LAW BOARD NO. 1582

PARTIES) THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

1. That the Carrier violated Article V of the Agreement by unjustly removing Los Angeles Division Trackman Robert Luckett from service December 5, 1978 for alleged flagrant violation of Company rules; continuing Mr. Luckett out of service after formal investigation held December 12, 1978; and failing to render a decision after formal investigation December 12, 1978.

2. That the Carrier reinstate Mr. Luckett to service with seniority, vacation, all benefit rights unimpaired and compensation for all wage loss beginning December 5, 1978, continuing forward.

FINDINGS: This Public Law Board No. 1582 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 a formal investigation to determine the facts and place the responsibility concerning his refusal to perform duties as instructed by the foreman and roadmaster and being insubordinate and quarrelsome on December 5, 1978.

Pursuant to the investigation on January 10, 1979 the claimant was written a letter advising him the result of the formal investigation which was his removal from service for violation of Rules 2, 6, 14 and 16 of the General Rules for the Guidance of Employees, Form 2626 Standard.

The Organization contends that at the conclusion of the investigation the Carrier failed to render a discipline decision or determine the claimant's responsibility for the charges. The Organization also contends that a decision on the formal investigation did not accompany the transcript which the Carrier mailed to the claimant and the claimant's representative, Assistant General Chairman Wolfersberger.

The Organization contends that the evidence is insufficient to find the claimant guilty of a violation of Rule G and that the roadmaster's inability to understand the claimant's words was because the claimant was a black man, and the roadmaster did not understand the accent.

The Organization also contends that it was an error for the Carrier to question the claimant without Union representation present on December 5, 1978. The Organization also urges that the Carrier erred in not calling additional witnesses at the investigation.

The Board has examined the transcript of record and the evidence indicates that the claimant was guilty of being insubordinate, quarrelsome and under the influence of intoxicants and/or narcotics in violation of the rules.

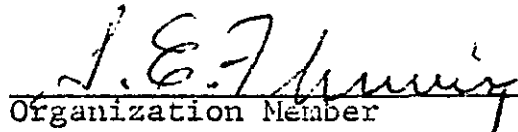
It is also noted that the claimant was employed August 8, 1977 and had been suspended sixty days on April 27, 1978 and also assessed twenty demerits for being absent from duty November 28 and 29 and December 1, 1978. Under those circumstances permanent discharge is fully justified.

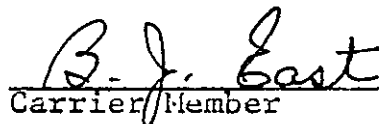
The evidence indicates that pursuant to the investigation the Carrier did render a decision as required by the agreement. The evidence regarding the claimant's manner of speech is not the only evidence regarding his being under the influence of alcohol or narcotics. There was evidence of record which supported this charge.

There is no evidence of record that the claimant requested Union representation at any time he was being questioned by the roadmaster, and there is no basis to set aside the decision on those grounds. The evidence also indicates that the Carrier called all necessary witnesses for the investigation, and other witnesses were not requested by the claimant. Under the circumstances herein the Board finds no justification to overrule the decision of the Carrier.

AWARD: Claim denied


Preston J. Moore, Chairman


Organization Member


Carrier Member