

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: Claim in behalf of former Los Angeles Terminal Division Trackman B. B. Johns for reinstatement with seniority, vacation and all other rights unimpaired and with pay for all wage loss beginning March 21, 1979, and continuing forward until he is returned to service.

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, if any, concerning an alleged on-duty personal injury of December 13, 1978 while employed as a Trackman on Gang 61 and the possible violation of Rules 2, 14, 16 and 30.

On March 22, 1979 the claimant was sent a letter advising that as a result of the investigation he was being removed from the service of the Carrier for violation of Rules 14 and 16.

The evidence indicates that the claimant contended he suffered an on-duty injury December 13, 1978 and did not report the injury until December 15, 1979 when the claimant called the roadmaster and advised him that he would not be at work that day because he had suffered an injury.

The roadmaster inquired if the claimant had filed a report of the alleged injury, to which the claimant responded that he had not. The claimant was instructed to come to the Los Angeles Terminal Division in Los Angeles to fill out the necessary reports. There is testimony that the claimant responded that he would do so. Nothing further was heard from the claimant until five days later when Form 1421 was received. The claimant had filled out this report at the San Bernardino Office on December 19, 1978.

The Organization has filed an extensive brief in behalf of the claimant and contends that the conduct in the investigation was prejudiced by the roadmaster having testified first and then staying in the room observing the testimony of fellow employees of the claimant and holding in his hand their statements. The Organization contends the roadmaster took their testimony, wrote it down

and then took said instruments up to the employees to sign and that he required them to sign these statements without their ever reading them.

There are 88 pages of testimony which the Board has had to consider carefully, as well as numerous exhibits submitted by the parties. The evidence indicates that the Organization had the information regarding the signed statements at the time of the hearing and did not raise the issue at that time. There is no evidence of coercion placed on the co-employees of the claimant.

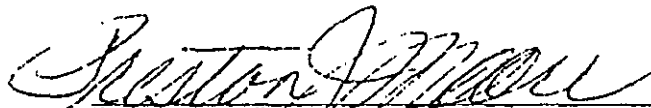
The claimant testified that fellow employee Dave Gonzales saw the incident in which the claimant was injured. The claimant testified that he was about to get on the truck when he observed a crowbar in a pile of cross ties and when he proceeded to get the crowbar, he fell and injured himself.

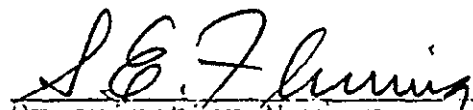
Employee Dave Gonzales denied any knowledge of the incident and denied observing the pile of cross ties. Mr. Gonzales and three other employees denied observing that the claimant was hurt. Each of them testified that they saw the claimant walking and talking and he appeared normal.

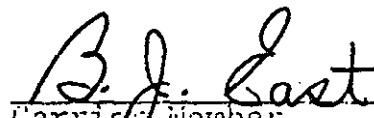
There is a great deal of other testimony which is conflicting between the fellow employees and the claimant. It is recognized that the other employees' testimony did not exactly coincide with their statements, but this is not abnormal. There is absolutely no evidence whatsoever that there was any coercion of the employees to testify.

The evidence was sufficient for the Carrier to make a finding that the claimant was guilty. Under the circumstances there is no justification to set aside the decision of the Carrier.

AWARD: Claim denied.

  
Preston J. Moore, Chairman

  
Organization Member

  
Carrier Member

Dated August 19, 1980