

PUBLIC LAW BOARD NO. 1562

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove claimant O'Neal from the service is not supported by substantial evidence and even if the record contained sufficient evidence, the discipline of permanent removal was too harsh.
2. That the Carrier be directed to reinstate claimant to service with seniority, vacation, all benefit rights unimpaired and pay for all wage loss beginning August 18, 1981, continuing forward and/or otherwise made whole.

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 a Plains Division Trackman and was charged with being under the influence of a drug, intoxicant or other substance on August 3, 1981 while on duty. Pursuant to the investigation the claimant was found guilty and was discharged from the service of the Carrier.

The Organization contends that the claimant's representative requested that the witnesses be sequestered, but such request was denied, and such a ruling precluded the claimant from having a fair trial.

The Organization also introduced evidence that the claimant had a blood test the following morning, which was the earliest time one could be obtained, and such test indicated a negative presence of codeine, morphine, methadone, barbiturates, amphetamines, and benzo-diazepines.

The transcript in this matter has been carefully studied. Section Foreman J. D. Barnes testified that the regular foreman was off on that date, and he was sent over to also supervise this gang. His testimony regarding the claimant would certainly support a finding of the claimant being under the influence of drugs or alcohol. It is also noted that the claimant did not give the Section Foreman a reason for having problems on that date.

Also Track Supervisor Hall testified that the Section Foreman had requested that he observe the claimant, and after having done so,

he reached the conclusion that there was something definitely wrong and that the claimant was under the influence of "something." Supervisor Hall also testified that he had observed the claimant on previous occasions and the claimant was certainly not performing to his normal capabilities and further he was unable to work.

Also Assistant Division Special Agent C. W. Holden testified that the claimant appeared to be under the influence of a narcotic drug or alcohol. He testified that he asked the claimant if he was sick or taking any medication, and the claimant responded in the negative.

The Organization introduced a statement from a doctor which indicated that if the claimant had been under the influence of drugs on the 14th, it would have shown up in the analysis test on the 15th. Such a statement cannot be conclusive for the reason that there are a thousand different types of drugs, and some may pass through the system within an eight hour period of time.

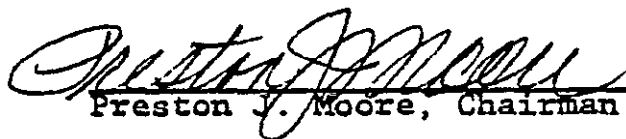
The testimony regarding the claimant's conduct and impairment at the time in question is sufficient evidence to find that the claimant was guilty.

The claimant gave long and detailed testimony as to what he was doing. The claimant further testified that he was taken out of service for refusing to comply with instructions of a supervisor and not for being under the influence of drugs. In this connection it is noted that the claimant immediately went to his General Chairman, and the General Chairman advised him to have a blood test taken as soon as possible. However, a blood test taken some twenty hours later is of scant value.

The Board is concerned over the alleged practice of the Plains Division denying the request of the Organization for the sequestering of witnesses. In some cases this is a very important factor, i.e., when the credibility of witnesses is a serious factor. It should be recognized that such a request under those circumstances should be granted. Failure to do so would justify setting the discipline aside. However, in the instant case refusal of the request for sequestering was not of a serious nature and does not justify setting the discipline aside.

The testimony of the claimant was carefully studied and considered. The claimant obviously believed that he did not receive a fair trial. However, the Board must find that there was sufficient evidence for the Carrier to make a finding that the claimant was guilty as charged. There is no justification for setting aside the discipline inasmuch as the taking of drugs can cause serious harm or injury to others.

AWARD: Claim denied.


Preston J. Moore, Chairman


Carrier Member


Organization Member