

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Trackmen Johnson and Sampson was unjust because they did not receive a fair and impartial hearing as contemplated by Rule 13 of Agreement between the parties dated August 1, 1980 and substantial evidence was not introduced on record that sustains the Carrier decision; and even if there had been substantial evidence introduced to support the Carrier's decision, permanent removal is excessive in view of the rules alleged to have been violated.

2. That the Carrier be directed to reinstate Claimants to service with seniority, vacation, all benefit rights unimpaired and pay for all wage loss beginning September 21, 1981 forward and/or otherwise made whole.

FINDINGS: This Public Law Board 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 claimants were notified to attend an investigation in regard to their allegedly being under the influence of intoxicants and entering into an altercation while on Company property at Montgomery, Texas at approximately 3:00 a.m. on September 21, 1981.

The formal investigation was held on September 29, 1981 in Conroe, Texas. Pursuant to the investigation the claimants were discharged from the service of the Carrier, and the Organization has filed this claim for their reinstatement with pay for time lost.

The transcript reveals there were several witnesses to the altercation, and the testimony of the witnesses establishes that claimants were drunk and both engaged in an altercation which could have resulted in serious injury or death to each of the claimants.

The testimony indicates that Joe Sampson approached Johnson Yazzie who had a cap on his head and struck him across the front of his face with a spike maul handle. A spike maul handle is approximately two and one-half feet long.

Evidence of record further establishes that claimant Yazzie later returned with a stick or a bar of some sort and struck claimant Sampson on the right side of the head just over his ear.

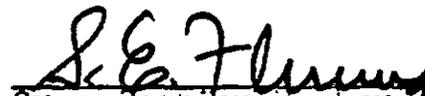
Testimony of record reveals that claimants Sampson and Yazzie were under the influence of alcohol. However, after a review of all of the evidence, it is the opinion of the Board that permanent discharge is too severe.

The claimants should be suspended for six months and reinstated after that period of time without pay for time lost providing they have submitted themselves to a rehabilitation program approved by the Carrier. The claimants are further cautioned that similar offenses of this nature will justify permanent discharge.

AWARD: Claim sustained as per above.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.


Preston J. Moore, Chairman


Organization Member


Carrier Member