

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the assessment of thirty (30) demerits to New Mexico Division trackman A. F. Gonzalez and assessment of twenty (20) demerits to New Mexico Division trackman G. H. Balderrama was unjust as result of investigation held in their behalf November 12, 1981 at Carlsbad, New Mexico.

2. That claimants A. F. Gonzalez and G. H. Balderrama records be expunged of the demerits assessed and that they be paid any wage loss and expenses that resulted from their attendance at the investigation because the record does not substantiate the Carrier's decision.

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 two claimants were working as trackmen at the IMC Refinery, Loving Industrial Spur, on October 15, 1981. Claimant Gonzalez let a jack down and the rail fell upon the foot of claimant Balderrama. The claimants were notified to attend an investigation to determine their responsibility, if any, and their possible violation of several safety rules for Santa Fe employees. Pursuant to the investigation the claimants were found guilty, and claimant Balderrama was assessed twenty demerits and claimant Gonzalez was assessed thirty demerits.

The transcript consisted of 41 pages of testimony, all of which had to be carefully studied in order to reach a decision in this case. The weather conditions on that date consisted of sprinkling rain and some wind.

The evidence indicates that the student foreman instructed claimant Balderrama and Mr. Orozco to take the tools out of the truck and jack up the rail in order to complete the work. They commenced doing so but were unable to place two of the ties underneath the rail because the jack did not raise the rail high enough. The student foreman than instructed Mr. Gonzalez either to remove that jack or go get another jack.

The testimony is in conflict in this regard. The student foreman testified that he instructed claimant Gonzalez to go get a jack, and claimant Gonzalez and witness Valdez testified that the student foreman instructed claimant Gonzalez to remove the jack.

Claimant Balderrama and Mr. Orozco told claimant Gonzalez not to move the jack. This may have been just a few minutes prior to the time claimant Gonzalez removed the jack, but the evidence is quite clear that claimant Gonzalez did remove the jack.

Although claimant Gonzalez testified that he did say "Look out," it is apparent that the two employees working there, Mr. Orozco and claimant Balderrama, did not hear him, and the rail fell on claimant Balderrama's foot.

Claimant Balderrama testified that he did not have his foot under the rail, that he knew he was to keep clear of the rail at all times, and that he certainly did not hear claimant Gonzalez say "Look out" or in any manner indicate he was going to remove the jack. Claimant Balderrama further testified that he had told claimant Gonzalez before he dropped the jack not to remove the jack because Mr. Orozco and himself were still working there.

Student Foreman Chavez testified that the following day they had to move the track approximately two inches. He also testified that this would be normal in lining any new panels.

The testimony also indicates there was more than one jack in the area and that one was just a few feet away from where the employees had been working.

Claimant Gonzalez admitted that he should have asked the two men working on the rail if they were through with the jack, and he also admitted it was usual and customary for the man who had placed the jack under the rail to remove the jack. He further admitted that when he first wanted to remove the jack, he was told by claimant Balderrama not to do so.

Trackman F. S. Valdez testified that he heard student foreman Chavez tell claimant Gonzales to drop the jack. He also testified that he did not hear claimant Gonzalez warn anyone that he was taking the jack out. He further testified that he heard claimant Balderrama tell claimant Gonzalez not to remove the jack approximately 8 to 10 minutes before claimant Gonzalez removed the jack.

Roadmaster H. R. Ramierz testified as an expert witness that rails sometimes slipped when not fixed to the ties or moved over and that it could possibly happen if it was hot and the rail had a lot of tension.

Trackman F. M. Orezco testified that he did not hear claimant Gonzalez yell "Watch out" or anything that would indicate he was lowering the jack.

After reviewing all of the above testimony, the evidence supports a finding that claimant Gonzalez was guilty, and the discipline which was assessed was reasonable. However, the evidence is insufficient to establish the guilt of claimant Balderrama, and his claim will be sustained.

AWARD: Claim of G. H. Balderrama sustained

Claim of A. F. Gonzalez denied

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

January 21, 1982
Chicago, Illinois