

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 Carrier's decision to remove Plains Division Trackman P. Fino from service as result of investigation held December 7, 1981 was unjust.
2. That the Carrier now reinstate claimant Fino to his former position with seniority, vacation, all benefit rights unimpaired and pay for all wage loss beginning January 5, 1982, forward and/or otherwise made whole because the investigation transcript does not contain substantial evidence that claimant violated the rules charged with in the Notice of Investigation and even if the Carrier offered substantial evidence that claimant violated the rules, discharge is wholly excessive and harsh.

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 charged with istting on the top side of a gondola car and not wearing safety glasses near M.P. 937 on the Ft. Stockton District on November 17, 1981. Pursuant to the investigation the claimant was dismissed from the service of the Carrier, and the Organization has filed this claim in his behalf.

The evidence of record indicates that actually the offense, if one did occur, occurred in the Alpine District.

Roadmaster Clyde McAlister testified that he observed the claimant on the end of a gondola facing toward the rear of the train, and the claimant was not wearing his safety glasses. Witness McAlister also testified that when he made a motion to the claimant for him to put on his safety glasses, he did so.

Section Foreman Ruben Flores testified that when his crew commenced working that morning the conductor on the train advised that he had a double broken angle bar between M. P. 933 and 934, and he advised his men to get on the caboose and he and the truck driver would go and fix the double broken angle bar.

Foreman Flores further did testify that when work train departed Alpine, all of the section men were in the caboose. He further testified that he had been diligent in instructing his personnel to

wear safety glasses and not to sit on the sides of gondola cars. He also testified that prior to the date in question he had instructed the claimant not to ride on the gondola car.

The claimant testified that he had worked for the railroad for about 13 years and that on the date in question he was preparing to start unloading the ties and this was the reason why he was on the gondola. He further testified that if he had known he wasn't supposed to get on the gondola prior to reaching the work area, he would not have done so.

The claimant admitted he was guilty of not wearing any safety glasses but testified that this was not intentional. He further testified that Foreman Flores had never instructed him not to sit on or ride on the sides of gondola cars.

Under the circumstances there can be no question but that discipline is justified. However, permanent discharge is too severe even though the claimant had previously been found guilty of violating safety rules. Therefore the Board finds that permanent discharge is too severe and directs the Carrier to reinstate the claimant with seniority and all other rights unimpaired but without pay for time lost.

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