

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 New Mexico Division Assistant Machine Operator E. R. Montoya and Machine Operator B. T. Munn from service was unjust, and the Carrier's decision to assess claimant R. R. Walker's record with one reprimand for their violation of Rules A, K 751, 751(A), 752(B), 752(C) and 752(D), Rules Maintenance of Way and Structures, 1975 as amended, as result of investigation held in Trainmaster's Office at Clovis, New Mexico, 8:00 a.m., Wednesday, October 27, 1982 was unjust.

2. That the Carrier now reinstate claimants Montoya and Munn with seniority, vacation, all benefit rights unimpaired and pay for all wage loss beginning November 5, 1982 continuing forward and/or otherwise made whole, and expunge one reprimand assessed claimant Walker's personal record and compensate him for wage loss and expenses incurred as result of him attending the investigation October 27, 1982 because the Carrier did not introduce substantial evidence that proved that the claimants violated the rules enumerated in their decision, and even if claimants violated the rules enumerated in the discipline, permanent removal and assessment of one reprimand is harsh and excessive discipline.

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 claimants B. T. Munn and E. R. Montoya were charged with being late to work on October 21, 1982 at Negra and allegedly entering into altercations with other employees while being transported by bus between Negra and Pederanal. These claimants were also charged with making threats and vicious gestures to fellow employees while working in the vicinity of Pedernal.

Claimants R. R. Walker and employee R. J. Hernandez were charged with engaging in horseplay in connection with the same incident. Pursuant to the investigation claimants Munn and Montoya were discharged from the service of the Carrier, and claimant Walker was issued a written reprimand. The Organization has filed a claim in behalf of the claimants, and the matter is now before the Board for a decision.

The transcript contains 71 pages of testimony, all of which has been carefully studied. Claimant Walker testified that claimant Montoya sat down beside him and put his arms around him and hugged him, and he attempted to get loose. The evidence is insufficient to establish any violation by claimant Walker. Therefore the written reprimand assessed him will be set aside, and in the event he lost pay while attending the investigation, he will be paid for that service.

Claimants Munn and Montoya were a few minutes late to work and apparently were being obnoxious while waiting for the bus to drive to where they were instead of walking over and getting on the bus. That, in itself, is not serious, but the later conduct of these claimants toward the student foreman was very serious conduct.

The testimony of student foreman J. L. Pena is accepted, and serious discipline is justified. However, under the circumstances herein the Board finds that permanent discharge is too severe. For that reason the Carrier is directed to reinstate the claimants with seniority and all other rights unimpaired but without pay for time lost.

The claimants should be warned that threatening another employee or a supervisor is a very serious act and may justify permanent discharge. Certainly any threat by either of these two claimants in the future will discharge, be it on or off Company property. Any fight, threats or other activity which is Company related can result in severe discipline, and this holds true if the fight or incident occurs off of Company property. Many employees are under the false impressinn that fighting with a supervisor or fellow employee off Company property is permissible. It may be, but it must be established that such was not related to their employment with the Carrier.

AWARD: Claims 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

Dated January 18, 1983
at Chicago, Illinois