

PUBLIC LAW BOARD NO 1582

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

**STATEMENT OF CLAIM:** Claim that former Northern Division Trackman J. A. Green be reinstated to service with seniority, vacation, all benefit rights, wage loss and/or otherwise made whole, account unjustly removed from service on May 1, 1981 as a result of formal investigation held on April 20, 1981.

**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 claimant was charged with fighting while on duty at approximately 1:30 p.m. on April 9, 1981 near MP 100, Paris, Texas District. The testimony of record has been studied, and all of the statements have been considered.

The claimant has a perfectly clear record, even though his guilt in this instance is well established. The claimant did engage in a scuffle with another employee. The testimony reveals that both employees became aware that they were violating the rules and stopped within 15 seconds. No injury or harm was done to either employee.

Although scuffling on Company property does constitute cause for permanent discharge, under the circumstances in the instant case, it is the opinion of the referee that permanent dismissal is too severe. Therefore the Carrier is directed 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 of the date of this award.

  
Preston J. Moore, Chairman

  
Organization Member

  
Carrier Member

CARRIER'S DISSENT TO  
AWARD NO. 216

The majority has properly recognized that fighting on duty is grounds for permanent discharge, but grievously erred in reinstating the claimant, albeit without pay for time lost. In view of the serious nature of the violation, the claimant's extremely poor work record and the fact (as pointed out in Carrier's letter of March 16, 1982) that on January 18, 1982, he was sentenced to ten (10) years in the Texas Department of Corrections, which sentence was subsequently reduced to ten (10) years probation, as result of a shooting incident occurring subsequent to the claimant's removal from service, there was no justification for reinstatement of the claimant.

For the above reasons Carrier dissents to Award No. 216.

  
Carrier Member