

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: That the Carrier's decision to remove New Mexico Division Trackmen S. F. Pacheco and T. H. Chavez from service was unjust; That the Carrier now reinstate Claimants Pacheco and Chavez with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held November 26, 1984 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved that the Claimants violated the rules enumerated in their decision, and even if Claimants violated the rules enumerated in the decision, permanent removal from service is extreme and harsh discipline under the circumstances.

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 were charged with being in an altercation and under the influence of alcohol while on Carrier property on November 13, 1984.

The Board has reviewed all the testimony of record and finds that the evidence establishes that both of the claimants had something to drink before returning to the bunk car. The evidence fails to establish that either of the claimants was under the influence. The evidence further fails to establish that either of the claimants was drinking alcoholic beverages or intoxicants while subject to duty. The testimony indicates that the claimants were subject to call. Roadmaster Martin was asked if the claimants were subject to duty and he answered that they were subject to call.


The only evidence regarding Claimant Chavez was his own--that he had had three beers. There is no evidence of record which would justify a finding that Claimant Chavez was the instigator of the fight, except for his testimony and the language that he used toward the woman allegedly brought to the bunk car by Claimant Pacheco. There is sufficient evidence for the Carrier to find that Claimant Chavez was partially responsible in the altercation. The Board finds after reviewing all the evidence that the discipline assessed Claimant Chavez is too severe. For that reason the Carrier is directed to reinstate Claimant T. H. Chavez with seniority and all other rights unimpaired, but without pay for time lost.

The evidence is sufficient to find that Claimant Pacheco was the instigator of the altercation. The evidence indicates that there was no fight. He just simply assaulted Claimant Chavez. The blood on Claimant Chavez's bunk and on the floor indicates that Claimant Pacheco went there and struck him while he was in the bunk.


After reviewing all the testimony, the Board finds there is no justification for setting the discipline aside for Claimant Pacheco. The claim for T. H. Chavez will be sustained as per above. The claim for S. F. Pacheco is denied.

AWARD: Claim disposed of 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


Union Member


Carrier Member

Dated at Chicago, IL
March 25, 1985