

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. Carrier's decision to remove former New Mexico Division Trackman J. Urioste from service effective October 24, 1986, and assess New Mexico Division Trackman M. G. Bargas' record with 30 demerits was unjust.

2. Accordingly Carrier should be required to reinstate claimant Urioste to service with his seniority rights unimpaired and compensate him for all wages lost from October 24, 1986 and remove 30 demerits from claimant Bargas' record.

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.

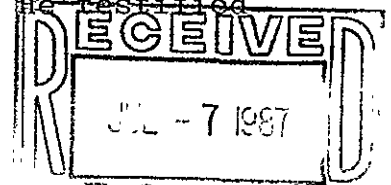
In this dispute the claimants, J. Urioste and M. G. Bargas, were charged with entering into an altercation while on duty and on Company property, and J. Urioste was quarrelsome and vicious toward S. Madrid, his supervisor, by using vulgar language involving possible violation of Rules 2, 7, 14, 16, 17 and 31(B) of the General Rules for the Guidance of Employees, Form 2626 Std., effective January 1, 1978.

Pursuant to the investigation the claimants were found guilty, and claimant J. Urioste was dismissed from the service of the Carrier, and claimant M. G. Bargas was assessed thirty demerits.

Trackman M. G. Bargas testified that claimant Urioste started cussing him after they had been working for approximately fifteen minutes. He testified that claimant Urioste asked him to come over by the truck and he was going to knock the hell out of him.

Mr. Bargas also testified that claimant Urioste told Foreman Madrid: "You old man, you ain't worth a blank either, and I'll knock the hell out of you, too." He then testified that his foreman advised him not to go over and engage in a fight with Mr. Urioste because he might lose his job.

Gerald Silva testified that the argument started over smoking, and claimant Urioste commenced cussing the foreman. He testified



that the foreman did not cuss claimant Urioste. He also testified that claimant Bargas used the same type of words back toward Mr. Urioste.

Trackman D. I. Garcia testified to about the same thing, except he did not hear the conversation between the claimants and Foreman Madrid. R. L. Hailey testified that claimant Urioste cussed Foreman Madrid. Trackman R. J. Hernandez also testified that claimant Urioste cussed Foreman Madrid. Foreman Madrid testified that claimant Urioste started cussing him and using bad words.

The evidence is sufficient for the Carrier to find that claimant Urioste was using foul and abusive language toward another employee and toward Foreman Madrid. The evidence is also sufficient for the Carrier to find that claimant Urioste was instigating a fight between himself and Trackman Bargas. Under these circumstances there is no justification to set the discipline aside which was assessed against claimant Urioste.

Claimant Bargas was assessed thirty demerits for his participation. After reviewing all of the evidence of record, it appears that thirty demerits is excessive discipline. In the opinion of the Board any discipline in excess of fifteen demerits is excessive. Therefore the Carrier is directed to reduce the discipline of claimant Bargas to fifteen demerits.

The claim of J. Urioste 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

*Dated at Chicago, Illinois
July 21, 1987*


Carrier Member