

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:

1. Carrier's decision to remove former Los Angeles Division Trackman Phillip Clay from service, effective September 16, 1987 was unjust.

Accordingly, Carrier should be required to reinstate Claimant Clay to service with his seniority rights unimpaired and compensate him for all wages lost from September 16, 1987.

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 notified to attend a formal investigation in Los Angeles, California on July 21, 1987 concerning his allegedly being absent from duty without proper authority on July 2, 1987 so as to determine the facts and place the responsibility, if any, involving possible violation of Rules 2 and 15, General Rules for the Guidance of Employees 1978, Form 2626, Std.

Thereafter the charge was amended to include being argumentative, abusive and insubordinate to Foreman and Assistant Division Engineer between 7:00 a.m. and 9:20 a.m. on July 9, 1987 near La Mirada, California. The investigation was postponed and finally held on September 16, 1987. Pursuant to the investigation the claimant was dismissed from the service of the Carrier.

Track Foreman Willie Cruz testified that on the morning of July 9 he received his orders by phone and he was instructed to help Foreman Kirksy at La Mirada. He testified that about 7:10 a.m. he went out to the truck, and all of his crew was there except for the claimant.

Foreman Cruz stated that they had been on the job awhile when the claimant arrived on another truck and inquired what time they left Sheila, and he replied to the claimant that it was ten minutes after seven. He testified that the claimant responded: "You're a f____ liar." The foreman further testified that the claimant continued to cuss him even after he was advised that such constituted grounds for removing him from service, and the claimant responded by saying: "I'll kick your ass."

Foreman Cruz testified that at this time he walked up to Foreman Kirksy's truck and got on the radio and called Mr. Walker. He testified that Mr. Walker and Mr. Canales arrived, and shortly thereafter Mr. Mansheim arrived. He stated they walked with him down to where the claimant was to question the claimant about the situation.

Mr. Cruz testified that Mr. Mansheim questioned the claimant, and the claimant again became very angry and started cussing and called Mr. Mansheim all kinds of bad words. The Foreman testified that Mr. Mansheim offered the claimant a ride back to Sheila, and the claimant said: "F____, I'd rather walk," and he took off, and the witness did not see him after that.

David A. Mansheim testified that he was the Assistant Division Engineer, headquartered at Los Angeles. His testimony corroborated the testimony of Foreman Cruz as to what occurred after he arrived at La Mirada. He further testified that the claimant did not have permission to be absent on July 2.

David Lee Walker, Assistant Roadmaster at Los Angeles, testified that on July 9 he was in his office at approximately 7:15 a.m. to 7:20 a.m. He stated Track Supervisor Canales was also in the office at that time when he received a phone call from the claimant who was at Sheila Yard wherein the claimant advised he had missed the truck for his section going out to La Mirada.

Roadmaster Walker testified that he and Mr. Mansheim went to La Mirada where the claimant admitted he had been swearing at Foreman Cruz, and he continued to call the Foreman a G.D. liar. He stated the claimant did not use the abbreviations.

Roadmaster Walker testified that Mr. Mansheim told the claimant to go and sit down, and he would talk to him in a few minutes, and the claimant started to walk to the truck but came back and wouldn't listen to what Mr. Mansheim told him.

He testified that Mr. Mansheim asked the claimant: "Do you know the rules for insubordination, I told you to go sit down in the truck, we'll talk to you later." Mr. Walker then stated that the claimant told Mr. Mansheim that he wouldn't go sit down in the truck, that if somebody was talking about him, he was going to be there, and he continued to say that Mr. Cruz was a liar.

Roadmaster Walker stated at that time Mr. Mansheim told claimant he was insubordinate, and he was out of service. He stated that the claimant said he did not want a ride back, and "You can take your f_____ job and shove it" and threw down his hard hat on the bank and started walking off the property.

Mr. Miguel Canales testified that he was working on the date in question as Track Supervisor on the Fourth Subdivision and at 7:15 a.m. on July 9 he received a phone call from the claimant who stated that Mr. Cruz' section truck had left Sheila without him. His testimony supported the previous testimony.

The claimant testified that he had been an employee for the Carrier for a little over 14 years. He stated that on July 9 he reported to Sheila Yard at approximately ten minutes until 7:00 a.m. where he entered the locker room and proceeded to put on his working boots.

He testified that one of his co-workers, Robert Becerra, brought to his attention that the section truck was pulling out of the yard. He stated Mr. Becerra said his truck was leaving, and he looked at his watch, and it was approximately three minutes until 7:00 a.m. He testified he asked Mr. Becerra what time his watch showed, and he indicated his watch showed three minutes until 7:00 a.m.

The claimant stated that he talked to Mr. Robles, the Material Yard Foreman, to see if he could get a ride with the material truck, and he was advised he would have to talk to somebody in the office to get authority.

The claimant testified he then tried to make a phone call, but the phone was being used by the Foreman, and at approximately 7:10 to 7:15 a.m. he contacted Mr. Canales, Track Supervisor, and stated his position to him. He said that Mr. Canales advised him that he could not be paid until he arrived at the work site, and he told Mr. Canales that would be alright.

The claimant testified that he encountered some of his co-workers, Tony Banks and Jesse Arenas, and Mr. Banks asked him: "What's going on? Willie Cruz took off out of the yard and left you. I told them you were in the yard and that your car was parked right there in front." The claimant testified Mr. Banks told him they left before 7:00 a.m. He testified that in talking with Jesse Arenas, he stated the same thing.

The claimant testified that he told Mr. Mansheim that he called Mr. Cruz a damn liar, and that Mr. Mansheim told him to stay at the truck which he did. He then testified that he observed Mr. Mansheim, Dave Walker and Mike Canales proceed up the embankment to have a conference with Willie Cruz and Tony Banks and possibly Jesse Arenas. He testified that he proceeded from the section truck, which was at the bottom of an embankment, up to them and told them if they were discussing the situation concerning him, he should have the right to hear what was being said about him concerning this matter.

The claimant testified that Mr. Mansheim told him: "No, you go have a seat in the truck," and he replied to Mr. Mansheim: "No, that I was not because this was improper to gather information without me hearing it." He testified that Mr. Mansheim then told him he was being insubordinate and was out of service and for him to go sit in the truck, and they would give him a ride back.

The claimant then testified that he was upset and angry and told Mr. Mansheim he did not need a ride. He testified he took off his hat, dropped it on the ground, turned and walked away, and then walked from La Mirada back to Sheila Yard.

The Board has carefully reviewed all of the evidence, including the claimant's discipline record. As of July 2, 1987 claimant had 40 demerits outstanding. It is very difficult to make a decision which would leave a man of 14 years seniority out of work, but the Board has no alternative when an employee commits the offense of insubordination.

The Board is not making any determination as to whether claimant was present at Sheila Yard at 7:00 a.m. on July 9. Further the Board is not making a determination as to the exact words used by the claimant when he approached the foreman. Needless to say, it is important that the claimant lost his head and became irate. The evidence further establishes by the claimant's own testimony that he was insubordinate.

All employees must be aware that they must obey the instructions of their supervisors unless those instructions are dangerous to them or to other employees. The claimant had an opportunity to file a claim for the time from 7:00 a.m. until the time that he arrived at La Mirada. This was all the claimant had to do in order to establish that he was at Sheila Yard at 7:00 a.m. and that his foreman had left him.

The claimant also had the opportunity to advise his foreman that he was there at 7:00 a.m., and two of his co-workers would testify in his behalf. It was unnecessary and certainly unwise for the claimant to commence calling his foreman a liar. He simply lost control of himself and became insubordinate.

Under those circumstances the Board does not have the authority to set the discipline aside.

AWARD: Claim denied

Preston J. Moore
Preston J. Moore, Chairman

Dated at Chicago, Illinois
September 15, 1988

C. J. Foster
Union Member

L. Z. Pope
Carrier Member