

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. That the Carrier's decision to remove Western Region, Darin Jones from service was unjust.

2. That the Carrier now reinstate Claimant Jones with Seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 10:00 a.m., October 21, 1994 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the claimant violated the rules enumerated in their decision, and even if claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.

3. That the Carrier violated the Agreement, particularly but not limited to, Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the claimant violated the rules enumerated in their decision.

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 a formal investigation was held on October 21, 1994 in Fresno, California concerning the claimant's alleged responsibility involving his being absent without proper authority on September 7, 21, and 22, 1994; insubordinate, quarrelsome, hostile, threatening and profane on September 19 and 20, 1994, and asleep on duty on September 20, 1994.

The claimant did not appear for the investigation. However, receipt for the letter scheduling the investigation was received from the claimant and was presented in evidence. The investigation was delayed when the BMW representative for the claimant asked that a delay of 45 minutes be allowed in order for the claimant to appear.

Evidence of record indicates that Section Foreman Garcia testified that the claimant was assigned to his gang on September 19 through 23, 1994 at Pittsburg, California. He also testified he witnessed a confrontation on September 19 between the claimant and David Wullenweber, at which time the claimant used abusive, hostile and threatening language. This witness further testified he talked with the claimant and explained such behavior was not acceptable on the Santa Fe.

Foreman Garcia testified another incident occurred on September 20, 1994 involving a confrontation between the claimant and Track Supervisor Clements wherein he stated the claimant became hostile, profane, and abusive and threatening to Supervisor Clements. This witness stated the claimant finally became so agitated during the confrontation he made an obscene gesture to Supervisor Clements and continued to use abusive and profane language.

Foreman Garcia also testified the claimant was absent without proper authority on September 21 and 22, 1994.

Track Supervisor Clements testified that on September 20, 1994 he noticed the claimant reclining in the section truck with his hat over his head. He stated that when he discussed the sleeping incident with the claimant, the claimant became agitated and used abusive, profane and hostile language.

Welder Helper David Wullenweber testified he was assisting Pittsburgh Section on September 19, 1994, and the claimant was hostile and threatening toward him on that occasion.

Under the circumstances herein there is no justification for the Board to set aside the discipline assessed by the Carrier.

AWARD: Claim denied.

*Signed at Schaumburg  
January 10, 1995*

*Preston J. Moore*  
Preston J. Moore, Chairman

*C. F. F...*  
Union Member

*L. Z. Pope*  
Carrier Member