

PUBLIC LAW BAORD NO. 1582

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

STATEMENT OF CLAIM: Claim in behalf of former trackman J. W. Carroll, Middle Division for reinstatement to his former position with seniority, vacation and all other rights unimpaired and compensation for time lost beginning at 1:30 p.m. on August 21, 1975, continuing forward until he is restored to service.

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 dismissed from the service of the Carrier for his alleged violation of Rules 8, 16 and 17.

The Board has examined the transcript of record, and there can be no doubt but that the altercation took place between the claimant and another employee. The altercation commenced during the noon hour break and continued until the employees were going off duty.

The other employee went out of his way to follow the claimant to his truck and try to get the claimant to engage in a fight but claimant refused. The claimant testified that the other employee placed his hands on him and shoved him and that thereupon he reached in his truck and withdrew a pistol and fired a shot in the air. Claimant brought the pistol to the investigation to show that it was plugged and would only shoot blanks.

The Board has examined the testimony and the evidence of record very carefully because of the seriousness of the charges. The claimant did bring a pistol on company premises and fired into the air although the pistol may have been plugged at the time.

However, the evidence of record indicates that the other employee was the aggressor in the matter, and the aggressor did testify that he was not alarmed or scared when the claimant pulled a pistol and fired it into the air. It appears that the claimant herein was merely attempting to prevent the other employee from doing him bodily harm.

Under the circumstances herein the Board finds that the claimant was guilty of violating the rules of the Carrier but that permanent discharge is too severe. On the foregoing basis the Board finds that the claimant should be reinstated 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 from the date of this award.

sd/ Preston J. Moore  
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Preston J. Moore, Chairman

sd/ S. E. Fleming  
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Organization Member

sd/ B. J. East  
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Carrier Member