

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: That the Carrier violated the terms of the Parties' Agreement when on November 6, 1975 they wrongfully discharged Trackman J. W. Benally on the basis of unproven charges; said discharge being arbitrary, capricious and in abuse of discretion. That Trackman J. W. Benally be reinstated to the service with seniority, vacation and all other rights unimpaired and compensated for loss of earnings subsequent to September 22, 1975 account the Carrier's wrongful action.

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 charged with a violation of Rule G of the General Rules for the Guidance of Employees. The Carrier contends that the claimant reported for duty under the influence and that the evidence of record is sufficient to establish that the claimant was guilty as charged. The Carrier alleges that in view of two previous Rule G violations by the claimant that the discipline assessed was reasonable and just.

The Organization contends that the claimant was not properly notified of the charges against him and that the alcoholic beverage he consumed was for medicinal purposes for an illness which claimant had suffered several days prior to and following September 18, 1975.

The claimant was notified that his case was going to be heard before this Public Law Board and was advised he was privileged to appear in person or by a representative of his choice if he so desired. The claimant did not appear, and the Union represented him in this case.

Evidence of record is substantial that the claimant violated Rule G. The testimony was that the claimant smelled of alcohol, was wobbly on his feet and that his speech was impaired. The claimant admitted he had consumed one-half pint of whiskey.

The claimant stated that he had to go to the hospital because of diarrhea, got tired of waiting for the doctor, bought a half pint of whiskey and drank that and then returned to his job. Claimant admitted he was supposed to be working when he drank the whiskey.

Evidence of record further indicates that the claimant had been dismissed on two prior occasions for a similar offense. It is noted in the record that the Carrier notified the claimant by certified mail of the investigation, and the claimant was aware when the investigation was going to be held and was present.

The Board has examined the charge and finds no error therein. On the basis of the evidence, there is no justification to overrule the decision of the Carrier.

AWARD: Claim denied.

sd/ Preston J. Moore

Preston J. Moore, Chairman

sd/ S. E. Fleming

Organization Member

sd/ B. J. East

Carrier Member