

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 Agreement when they dismissed Trackman D. L. Napier from service on May 5, 1975, said dismissal being arbitrary, unjust and on charges not contained in the notice of record. That the Carrier now reinstate D. L. Napier with seniority, vacation and all other rights unimpaired and that he be compensated for loss of earnings beginning May 5, 1975 continuing forward until he is reinstated 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 an investigation was held to develop the facts and place the responsibility in connection with a report that claimant and trackman Charles B. Galvan were involved in a physical altercation in the Sheila Street Maintenance of Way Yard at approximately 9:30 a.m. on April 23, 1975 in possible violation of Rules 3, 16, 17, and 19 of the General Rules for the Guidance of Employees, 1966.

The Carrier takes the position that the claimant was insubordinate, careless and dangerous in throwing angle bars onto the Company truck and that the evidence sustained the position that the claimant was quarrelsome and entered into a physical altercation with a fellow employee.

The Organization takes the position that the claimant did not receive a fair and impartial hearing and that the claimant was found guilty of violating rules with which he was not charged in the notice. The Organization also contends that the discipline assessed was unjust and unreasonable.

The claimant was notified that his case was going to be heard before this Public Law Board and was advised that 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.

The Board has examined the charge filed during the investigation and the decision rendered by the Carrier. There is no basis to find the hearing was unjust. The charge referred to an alleged altercation which took place in possible violation of Rules 3, 16, 17 and 19 and the evidence is sufficient to establish that the claimant violated those rules.

The claimant does have an extremely good record, and the Organization introduced evidence that the Carrier offered to reinstate the claimant on a leniency basis provided he reported within thirty days. The claimant failed to report within thirty days. It is noted, however, that the claimant may not have been aware of the necessity of reporting within thirty days.

In the light of this possibility, along with the claimant's good record, and the fact that the altercation was nothing more than a slight push, it is the finding of the Board 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
Preston J. Moore, Chairman

sd/ S. E. Fleming
Organization Member

sd/ B. J. East
Carrier Member