

PUBLIC LAW BOARD NO. 2774

Award No. 116
Case No. 116

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
The Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the dismissal of Ramon Montoya for his alleged violation of certain rules of the Santa Fe Railway Company's Operating Rules was without just and sufficient cause, in abuse of discretion, unduly harsh and on the basis of unproven charges.
2. Claimant Ramon Montoya be reinstated to the service of the Carrier with seniority, and all other rights restored unimpaired, and that he receive compensation for all wage loss suffered."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates that claimant herein entered Carrier's service in 1974 and rose from a Trackman on Carrier's Colorado Division to the position of Track Supervisor in 1979. Following an investigation held on November 4, 1982, claimant was found guilty of the charges of unauthorized use of a Company vehicle while under the influence of alcohol and being argumentative and threatening toward Company officials in violation of Carrier's rules. As a result, he was dismissed from service.

There is little doubt about the circumstances surrounding the disciplining of the claimant herein. He was found by Carrier's Special Officer and certain other Carrier officers in a Company vehicle while under the influence of alcohol and in the course of the subsequent steps taken he was belligerent and threatening to the supervisors. The only aspect

- 2 -

of the charges which appears doubtful, based on the record, was the question of the unauthorized use of Carrier's vehicle. It appears that claimant had traditionally and repetitively used the Carrier's vehicle to go to and from work without any questions being raised. With respect to the other aspects of the charges, there is no doubt but that he was guilty of the charges based on a careful evaluation of the facts. Petitioner raises the point that at the time of the incident claimant was not under pay and also there is at least the presumption that he may have had a problem with respect to the Special Agent who may have "set him up". However, there is no doubt about the guilt and Carrier, under the circumstances, took appropriate action, as the Board views it. The only mitigating circumstances herein involve claimant's past record. During his lengthy service with Carrier, he obviously performed well and was promoted regularly to positions of higher responsibility. Under the circumstances, it is the Board's view that in the interests of all concerned, the penalty has been sufficient in terms of the infraction. Therefore, it is the Board's view that Montoya be reinstated to his former position, without pay, as a Trackman and, further, that he be put on probation for a six-month period. Assuming that he completes the probationary period without any difficulty, he at that time may bid on any position to which his seniority entitles him.

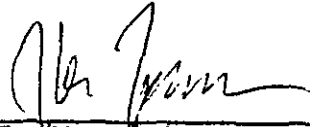
AWARD

Claim sustained in part; claimant will be reinstated to the position of Trackman and placed on probation for a six-month period. At the end of that time, if he has had no problems, claimant may bid on any position to which his seniority entitles him.

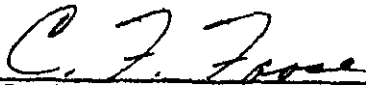
ORDER

Carrier will comply with the award herein within thirty (30) days from the date hereof.

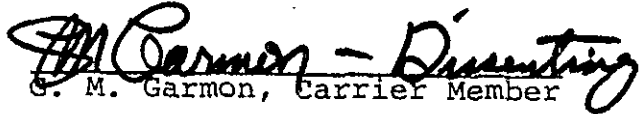
- 3 -



I. M. Lieberman, Neutral-Chairman



C. F. Foose, Employee Member



G. M. Garmon, Carrier Member

Chicago, IL
December 17, 1984