

PUBLIC LAW BOARD NO. 2774

Award No. 34
Case No. 43

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the Carrier violated the Agreement when as a result of an investigation conducted May 25, 1979, they terminated the services of Trackman E.G. Garcia, said dismissal being harsh and disproportionate to the offense committed.
2. That the Carrier shall reinstate E.G. Garcia to his former position as Trackman with seniority, vacation, all other rights unimpaired and, additionally, compensate him for loss of earnings suffered account of the Carrier's improper action."

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.

Following an investigation held on May 25, 1979, Claimant herein was dismissed for allegedly dishonestly withholding information concerning a personal injury which allegedly occurred on Company property on April 3, 1979. The record indicates that Claimant reported an injury having occurred on duty on April 3 while turning the bolt machine. His story was verified by a helper at that time. On April 24, 1979, both Claimant and the helper admitted both orally and in writing that the injury on duty was a fabrication and the injury had actually been sustained in an off duty incident while they were finger wrestling during the evening of April 3, 1979. Following the investigation held in May, both Claimant and the helper were dismissed. Subsequently, the helper was reinstated to service on a leniency basis in early 1981.

The Board has no difficulty in undersanding Carrier's position with respect to its dismissal of Claimant as well as the helper. That decision, however, was changed with

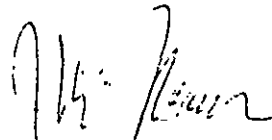
respect to the helper but not with respect to the Claimant for apparently unknown reasons. From an examination of the record, there is no doubt with respect to Claimant's guilt and responsibility for the incident in question. The incident was indeed a serious infraction involving moral turpitude. However, Carrier's action in reinstating his co-employee involved in this matter constituted disparate treatment which was unjustified. Even though the claim herein (and the only individual injured) was that of Claimant, he should not have been treated differently than the helper who was equally at fault. Thus, based on the disparate treatment, Claimant shall be reinstated to his former position with all rights unimpaired but without compensation for time lost as an adequate penalty on a comparable basis to that of the helper.

AWARD

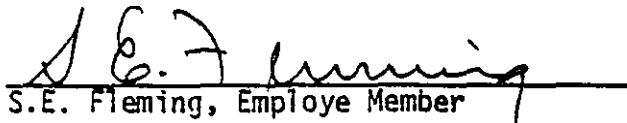
Claim sustained in part; Claimant shall be reinstated to his former position with all rights unimpaired but without compensation for time lost.

ORDER

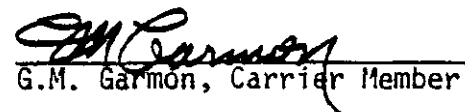
Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I.M. Lieberman, Neutral-Chairman



S.E. Fleming, Employee Member



G.M. Garmon, Carrier Member

May 13, 1982
Chicago, IL