

PUBLIC LAW BOARD NO. 2774

Award No. 66
Case No. 102

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the dismissal of Trackman/Truck Driver D. P. Fierro, was without just and sufficient cause based on unproven charges. Said action being an abuse of discretion and excessive.
2. That claimant now be returned to his former position with compensation for all wage loss suffered and seniority and all other rights restored unimpaired and that all charges be expunged from his record."

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.

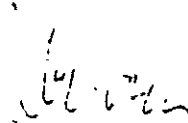
Following an investigation held on September 13, 1982, claimant was found guilty of the charges against him and was dismissed from service. He had been charged with responsibility for being abusive, indifferent to duty, argumentative and then absenting himself from duty without proper authority on August 30, 1982.

A review of the transcript of the proceedings in which the charges were investigated reveals that on August 30, 1982, claimant, after experiencing some difficulties with his personal vehicle and having been sent back with a supervisor to secure his hard hat, went to work as usual. Some time later that day he got into an altercation with his supervisors with respect to his safety glasses which had been left behind. The assistant supervisor testified that he offered him, that is claimant, his safety glasses and the offer was refused. After an abusive exchange between the claimant and the supervisors, claimant walked off the job. Thus, these facts in themselves justify Carrier's decision that claimant was indeed guilty of the charges indicated.

Prior to the incidents involved in this dispute, claimant had been employed by Carrier for approximately seven years. In the course of his employment he had developed a rather extensive disciplinary record, including one prior dismissal and a reinstatement on a leniency basis. In view of the seriousness of the incident indicated, particularly with regard to claimant having left his work without permission, this Board believes that the dismissal was justified. In any event, it is not within the province of this Board to second-guess Carrier in its determination of the penalty unless such determination was clearly discriminatory or an abuse of discretion. In this instance, the guilt was established, the discipline was appropriate and thus the claim must be denied.

AWARD

Claim denied.


I. M. Lieberman, Neutral-Chairman


C. F. Foote, Employee Member


G. M. Garmon, Carrier Member

Chicago, Illinois
July 23, 1984