

PUBLIC LAW BOARD NO. 3308

Award No. 8
Case No. 8

PARTIES Brotherhood of Maintenance of Way Employees
VS.
RESPONSE The Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

"Claim that former Albuquerque Division Trackman James Beams be reinstated with seniority, vacation and all basic rights restored and that he be compensated for all wage loss and/or made whole, beginning November 10, 1981, account unjustly removed from service for bringing discredit upon his fellow employees and the Carrier by becoming involved in an unlawful act, as a result of investigation held October 16, 1981."

FINDINGS

Upon the whole record, 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.

In this dispute the Claimant was notified to attend an investigation on October 16, 1981, concerning:

"xxxx your alleged violation of Rules 2 and 16, General Rules for the Guidance of Employees, Form 2626 Standard, when you brought discredit upon your fellow employees and the Santa Fe Railway Company by allegedly becoming involved in an unlawful act at Flagstaff, Arizona on Thursday, September 10, 1981, xxxx."

Rule 16 reads in part:

"Employees must not be indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or vicious. Employees must conduct

themselves in a manner that will not bring discredit on their fellow employees or subject the Company to criticism or loss of good will."

During the course of the investigation held on October 16, 1981, Claimant admitted that due to the incident that occurred at Flagstaff, Arizona on September 10, 1981, he had been charged with armed burglary and attempted homicide.

At the time this incident arose, Claimant, after only approximately 5 months of service, was serving a 180 day suspension, without pay, for being under the influence of intoxicants.

The Organization has made extensive arguments regarding the appropriateness of Carrier's action since Claimant was not an active employee. It further contends that the investigation was not timely held since Carrier failed to hold the investigation within 30 days of the alleged incident.

The fact that the incident occurred while Claimant was serving a 180 day suspension does not take away Carrier's right to discipline him. Claimant was still an employee and was, therefore, subject to certain rules of the Carrier. After a careful review of the record, the Board holds that Carrier did not violate the provisions of Rule 13 and therefore, the investigation was timely held.

Numerous awards of the National Railroad Adjustment Board have long held that conduct off the Carrier's property while off duty

can be grounds for discipline. The incident for which Claimant was charged is a serious matter for which penalty of dismissal is appropriate. Under the circumstances there is no justification for setting the discipline aside.

AWARD Claim denied.

McCarmon
Carrier Member

Clarence H. Herrington
Clarence H. Herrington
Neutral Member

S. E. F. Leming
Organization Member

Dated at Chicago
February 22, 1983