

PUBLIC LAW BOARD NO. 4021

Award No. 2
Case No. 4

PARTIES The Brotherhood of Maintenance of Way Employees
 TO and
DISPUTE The Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM

1. Carrier's decision to remove Los Angeles Terminal Assistant Foreman M. C. Muro from service effective October 4, 1984, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Muro to service, with seniority rights unimpaired, and compensate him for all wages lost from October 4, 1984.

FINDINGS

This Board, upon the whole record and all the evidence, 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 by Agreement dated November 26, 1985, and has jurisdiction of the parties and the subject matter.

Claimant was employed by the Carrier as an Assistant Foreman. On October 4, 1984, his gang was divided into two parts: with the Foreman supervising part of the gang at one location, and Claimant assigned to accompany and supervise part of the gang, sent to another location, to check some switches. Claimant and his gang were observed by the Division Engineer at approximately 7:20 a.m., at a location some distance from than that to which they were sent, with the Claimant and Driver in the parked truck, and members of the gang ordering coffee and food from a nearby food truck. Claimant was removed from service by the Division Engineer, and Investigation was held, and Claimant was discharged from the service.

The record reveals that Claimant previously had been instructed that he was not to permit employees to take "coffee breaks" immediately after starting work, and that, in fact, Claimant had received prior discipline for violating those instructions. It is undisputed that Claimant's gang was taking a "coffee break" at the time they were observed by the Division Engineer, in contravention of Carrier's instructions.

The uncontested facts show that Claimant's gang was engaged in conduct which violated Carrier's instructions, in the presence of the Claimant, and that Claimant knew the rules and that he was in charge of the gang. Those facts are sufficient to establish a prima facie case against the Claimant, and the burden then is upon him to mitigate his responsibility for the violation of instructions.

Claimant raised several arguments in his own defense; however, the Board is not persuaded. He testified first, that the Track Supervisor instructed him to take the gang for coffee; but subsequently changed his testimony to assert that it had been the Foreman who instructed him to do so. When the Foreman disputed that testimony, Claimant changed his story again; asserting that he was unaware that the gang left the truck when he stopped. Later still, he admitted he was aware of their leaving, but that he did not authorize them to do so. The Claimant's testimony is not credible, and, even if viewed in the best possible light, reveals an individual unable or unwilling to control a gang.

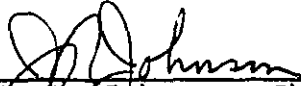
In view of the facts contained in the record, and the claimant's past record, the discipline assessed was warranted. We will deny the claim.

AWARD

Claim denied.


C. F. Foose, Employee Member


L. L. Pope, Carrier Member


J. R. Johnson, Chairman
and Neutral Member

Dated: February 28, 1986