

PUBLIC LAW BOARD NO. 4021

Award No. 20
Case No. 18

PARTIES
TO
DISPUTE

The Brotherhood of Maintenance of Way Employees
and

The Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM

1. Carrier's decision to remove Coast Lines Welder Helper M. G. Verdugo from service effective July 24, 1985, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Verdugo with seniority rights unimpaired, and compensate him for all wages lost from July 24, 1985.

FINDINGS

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated November 26, 1985, and has jurisdiction over the parties and the subject matter.

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This is the last of four discipline cases before this Board which involve Claimant Verdugo. Claimant was employed by the Carrier for approximately one and one-half years, and was working as a Welder Helper when this case arose. On July 15, 1985, he was sent a letter, via Certified Mail, to attend an Investigation:

. . . concerning your alleged allowing unauthorized persons to stay in outfit car AT-203261 located at Mormon, California, weekend of June 29 and June 30, 1985, in possible violation of Rules 1, 2, 4, 14, 16 and 31-B . . . and Rules K and N. . . .

Claimant was dismissed following the Investigation. As in the three previous cases, Claimant was properly notified of the Investigation (by letter sent to his last registered address), but he failed to appear. Copy of the Notice was sent to the General Chairman as required by the Agreement, and other appropriate requirements were met. Therefore, it was proper that the Investigation be held in abstentia.

The record reveals that Ms. Colette Hunter contacted the Carrier, and explained that her belongings were locked in the subject outfit car. She explained that Claimant had permitted her and

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her minor child (estimated to be five years' old) to occupy the outfit car over the weekend, but she found it locked when she returned to claim her possessions. Roadmaster McBee and Special Agent Howell accompanied her to the car, and permitted her to retrieve her belongings. Testimony adduced in the investigation indicates that Claimant had been given permission to occupy the car himself, because he allegedly lacked money for a motel room. Ms. Hunter indicated that Claimant was, in fact, occupying a motel room at the time.

The testimony is clear and positive with respect to the charges, and, absent contradictory evidence, must be taken as fact. It is equally clear that the Rules prohibit the occupancy of trains, engines or cars by unauthorized persons.

We will not attempt to ascertain the Claimant's motives in allowing Ms. Hunter and child to occupy the outfit car, because that is irrelevant to the case at hand. Whether his motives were good or bad, the fact remains that his action violated the Carrier's rules. Moreover, permitting a mother and small child to occupy a rail car near the mainline, is a serious violation of safety

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rules, and could result in severe harm to the individuals, and substantial liability to the Carrier.

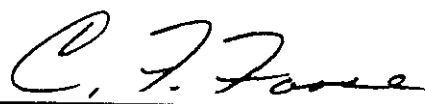
The Board finds that there is sufficient evidence in the record to support a finding of guilt with respect to the charges. The sole remaining issue, then, is the measure of discipline assessed in this case.

This Board has upheld Claimant's discharge in Award No. 18, and, therefore, the issue is moot. However, the Board notes that Claimant had a balance of forty demerits at the time of his discharge, and if he had been assessed a mere twenty additional demerits for this offense, he would have been subject to discharge under the Brown System of Discipline in effect on this property. Therefore, the Claimant's discharge was appropriate.


AWARD

Claim denied.

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C. F. Foose, Employee Member


L. L. Pope, Carrier Member


J. R. Johnson, Chairman
and Neutral Member

Dated: July 22, 1986