

PUBLIC LAW BOARD NO. 4021

Award No. 35
Case No. 46

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 System Steel Gang Trackman C. Begaye from service, was unjust.
2. Accordingly, the Carrier should now be required to reinstate Claimant Begaye with seniority, vacation, all benefit rights unimpaired, and pay for all wage lost as a result of investigation held at 9:30 am, August 29, 1986, continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, permanent removal from service is extreme and harsh discipline under the circumstances.

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.

Claimant was employed by the Carrier as a Trackman on the System Steel Gang. He previously had held seniority as a Foreman, but lost that seniority, due to his failure to respond to a notice of recall. The Organization succeeded in recovering his seniority through the grievance procedure, and Claimant was notified to report to the Office for a physical examination pursuant to the settlement of the grievance.

On August 15, 1986, Claimant reported to the Office pursuant to the Notice, and the Carrier contends that he was under the influence of alcohol, and conducted himself in a belligerent manner. He was removed from the property by a Special Agent, and was arrested. Following an Investigation held on August 29, 1986, the Claimant was dismissed from the service.

The Organization contends that the Carrier did not introduce sufficient evidence to prove Claimant's guilt, and that the discipline was excessive in view of the nature of the offense.

The record demonstrates conclusively that Claimant reported under

the influence of alcohol; in fact, Claimant admitted that such was the case. The following from page 3 of the transcript is relevant:

Q. Had you been drinking intoxicants when you were on the property that day?

A. I supposedly.

Q. How much had you had to drink?

A. I don't know. I was out. I was completely intoxicated. Nothing else I know. All I know is when I woke up in jail.

Q. You were taken to jail from Company property?

A. Probably.

Q. Do you understand that Rule 6 prohibits drinking and being on Company property while you are employed by the Santa Fe?

A. Yes, I know.

It is clear that Claimant was guilty of violating Rule 6 by his own admission. There was additional testimony to the fact by the Clerk and the Special agent, but it is unnecessary to cite it here in the face of Claimant's admission of guilt. With respect to the second charge: that Claimant conducted himself in a bel-

ligerent and insubordinate manner while on the property, the following is his testimony:

Q. You were also charged with Rule 16 which says you were belligerent and insubordinate. Do you recall your actions that would indicate you were in violation of that rule?

A. I don't know.

In addition to testifying about the Claimant's intoxication, Clerk Yazzie and Special Agent Tomberlin gave positive evidence that Claimant was argumentative and belligerent, and that he refused to leave the property after being ordered to do so repeatedly. Claimant neither affirms or denies this evidence, but merely states that he doesn't know. Under these circumstances, the Board must accept the unrefuted testimony of the Carrier witnesses as fact. Therefore, Claimant was guilty of the second Charge.

Claimant acknowledged that he was notified of the time, date and place of the Investigation, but came and offered no defense. The Charges were of a serious nature, and countless Awards of Arbi-

tration Boards have upheld discharge for such offenses. The Carrier discharged all of its contractual responsibilities, and proved its case. In view of the serious nature of the offense, we find that discharge was appropriate.

We will deny the claim.

AWARD

Claim denied.

C. F. Foose
C. F. Foose, Employee Member

L. L. Pope
L. L. Pope, Carrier Member

J. R. Johnson
J. R. Johnson, Chairman
and Neutral Member

Dated: January 20, 1987

