

AWARD NO. 16

Case No. 15

PUBLIC LAW BOARD NO. 4823

PARTIES) THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
TO) versus
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

"Carrier's decision to remove former Texas Division Foreman L.I. Lopez from service, effective July 7, 1989, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Lopez to service with his seniority rights unimpaired and compensate him for all wages lost from July 7, 1989."

FINDINGS:

This Public Law Board No. 4823 finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

On June 19, 1989, Carrier's Division Manager wrote the claimant notifying him of formal investigation to be held concerning the claimant allegedly removing tools from the rear of a fertilizer spreader at Cameron, Texas, on June 8, 1989, with the intent of stealing them, in possible violation of Rules L, 604 and 607 of Carrier's Rules, Maintenance of Way and Structures.

Carrier found Claimant responsible for violation of Rules L and 607 and he was removed from service immediately following the investigation. (Rule L requires that employees conduct themselves in such a manner that will not subject the company to criticism or loss of good will. Rule 607 provides, in pertinent part, that employees must not be dishonest, and any act of misconduct or willful disregard or negligence affecting the interests of the company is sufficient cause for dismissal.)

Testimony developed at the formal investigation indicates that on June 8, 1989, the claimant denied having any knowledge of the missing tools, but stated he wanted to talk to the members of his gang the following morning. The following morning (June 9, 1989) he initially admitted to

having taken the tools, however, he later stated that he placed the tools behind a wheel of the fertilizer spreader, with the intent of taking them later, but then decided that he did not need the tools and left them where he had placed them; behind a wheel of the fertilizer spreader. The credibility of Claimant's story is rendered suspect by the testimony of the Carrier's witness, Special Agent Beatty, who testified that both he and employees of Milam Grain Company had searched the area, looked under the machine and had found no tools on June 8, 1989; the tools were found under the machine on June 9, 1989, after Claimant told Special Agent Beatty where he had placed them.

The Board also notes for the record that Claimant pled guilty to a charge of intentionally appropriating, by acquiring and otherwise exercising control over, property, to wit: tools of the value of \$20.00 or more, but less than \$200.00, without the effective consent of the owner, and with intent to deprive the owner of the property. He was sentenced to 30 days in jail and fined \$100.00. However, his sentence was suspended and he was placed on probation for a period of six months.

Claimant's discipline record could be better. He has been issued demerits on 3 previous occasions, reprimands on 2 previous occasions and has been previously suspended for rule violations. However, he has relatively long service with the Carrier. He was employed in 1973.

This is not a court of law; it is not necessary in this forum that guilt be proved beyond a shadow of doubt or even by a preponderance of evidence. In order for a carrier to meet it's burden of proof in these cases it is only necessary that sufficient evidence be presented which would enable a reasonable person to conclude that the principal was responsible for violation of the rules cited. The evidence presented in the instant case (including Claimant's admissions) meets that criteria.

Notwithstanding the above findings, in deference solely to Claimant's relatively long service, the Board finds that Claimant should be given one last chance to prove that he can serve the Carrier as an honest, loyal, dedicated employee, and conduct himself in a manner that will not subject the Carrier to criticism or loss of good will. Claimant must understand that he has severely tested the compassion of this Board. If he subsequently fails to conduct himself in the manner prescribed above, he quite probably will bear the consequences of permanent dismissal.

The Board finds that the discipline has served its purpose and Claimant will be reinstated without pay for time lost on a last chance basis.

AWARD:

Claim sustained in part in accordance with the findings above.

ORDER:

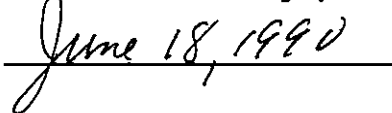
Carrier is directed to comply with the Award within thirty (30) days from the date shown thereon.


G. Michael Garmon, Chairman


Employee Member


Carrier Member

Dated at Chicago, IL:


June 18, 1990