

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: (1) That the Carrier violated the provisions of the Agreement by unjustly removing Southern Division Trackman E. Hemphill from service December 11, 1978, for allegedly making threat to his Foreman, October 13, 1978, and being insubordinate by his reporting for duty October 14, 1978 as instructed.

(2) That the Carrier now reinstate Mr. E. Hemphill to service with seniority, vacation, all benefits rights unimpaired and compensation for all wage loss beginning December 11, 1978 continuing forward until his reinstatement.

FINDINGS: This Public Law Board No. 1582 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was employed by the Carrier as a trackman on the Southern Division on July 11, 1973. On November 13, 1978 the claimant was notified to attend a formal investigation to develop all facts and place the responsibility in connection with his making a threat to Foreman M. L. Miller on October 13, 1978 and being insubordinate when not reporting for duty as instructed on October 14, 1978.

The investigation was ultimately held on December 8, 1978, and pursuant thereto, the claimant was discharged. The Organization then appealed the claim and has filed a brief in support of the claim.

Testimony of record indicates that the claimant and another employee were advised that because they were the two junior employees in the gang that they would be required to work overtime on Saturday, October 14, 1978.

Testimony of record indicates that the claimant stated he would not work and that he would take care of anybody who messed with his family. Testimony indicates that the claimant further stated that in the morning he was coming in his car so he could have his heat with him and he would take care of anybody that messed with his family.

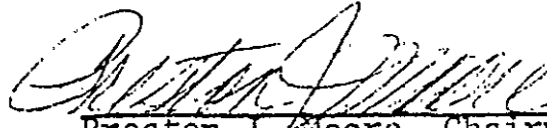
The claimant testified that the extra gang foreman came to the employees and stated that he had to have two workers and that he had two employees before he got to the claimant. The claimant further

testified that he stated he would work if he had to. The claimant admitted that the extra gang foreman instructed him to report for work Saturday, October 14, 1978. The claimant also admitted that he did not report for work on that date. The claimant testified that he did not threaten anyone.

In view of the conflicting testimony, the Board read carefully all of the transcript of record and considered Carrier's Exhibits A through I, as well as the briefs of the Organization and Carrier.

The Board has insufficient evidence to determine whether or not the claimant actually threatened the extra gang foreman. However, it is immaterial whether the claimant did threaten the foreman since the claimant admitted he was directed to come to work on Saturday, October 14, 1978 by the extra gang foreman and that he refused to do so. Such conduct constitutes insubordination, and on that basis permanent dismissal is justified. Under all of the circumstances herein, there is no evidence or justification for overruling the decision of the Carrier.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member

Dated April 7, 1980