

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: Claim in behalf of former Trackman R. L. Thomas Valley Division, for reinstatement to service with seniority, vacation and all other rights unimpaired and compensation for gross wage loss beginning April 20, 1979, and continuing forward until he is returned to his former position as Trackman on the Valley Division.

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 notified to attend a formal investigation to develop the facts and place the responsibility concerning his alleged failure and refusal to obey orders and instructions of his immediate supervisor, D. J. Villegas, and being abusive, using foul language to his immediate supervisor when told to stop whistling at girls at Center Street, Shafter, at approximately 2:45 p.m. on April 20, 1979.

Pursuant to the investigation the claimant was found guilty and was notified by letter dated May 31, 1979 that he was dismissed from the service of the Carrier.

The Board has carefully examined the transcript and the 23 exhibits submitted by the parties. Needless to say, there is a great deal of conflict in the testimony. Credibility is a serious issue in this case.

The claimant herein and a co-worker testified that they did absolutely nothing wrong and denied all of the charges made by the supervisor. The claimant and his co-worker, who strongly supported the claimant's position, testified, but their testimony was conflicting.

The claimant testified the foreman approached them only once whereas co-worker L. M. Saiz testified that the foreman approached them twice. The claimant testified that the foreman never told them to quit the horse play and get to work, but L. M. Saiz testified that the foreman did so. Such testimony places a great lack of credibility in the testimony of the claimant.

The claimant testified he did not see any girls and did not whistle at any girls, but it is clear that the incident occurred at approximately the time school children were coming out of school and passing by that location daily.

At the same time it is recognized that the supervisor conceded on cross examination that he did not see the claimant purse his lips to whistle.

After carefully reviewing all of the evidence, it appears there is some fault on both sides of this dispute. However, there is sufficient evidence for the Carrier to make a finding that the claimant was guilty of violating the Carrier's General Rules.

The referee is aware that the claimant had previously turned down reinstatement and waiving pay for time lost and recognizes the fact that it is a matter of principle with the claimant. However, some discipline is justified.

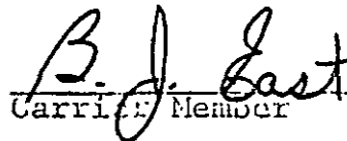
It is therefore the opinion of the Board, after carefully reviewing all of the testimony, that permanent discharge is too severe, and the claimant should be reinstated with seniority and all other rights unimpaired but without pay for time lost.

AWARD: Claim sustained as per above.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.


Preston J. Moore, Chairman


Organization Member


Carrier Member

Dated August 19, 1980