

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 Trackman Ray Rex Girard for reinstatement with seniority, vacation and all other benefits unimpaired and pay for wage loss with interest at the rate of six percent per annum, beginning September 7, 1979 continuing forward.

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 working at the Centralized Rail Welding Plant in Amarillo, Texas. At approximately 10:00 a.m. he received a message that his wife had an emergency. The foreman was instructed to advise the claimant that it was not the practice at the plant to deliver personal messages.

The superintendent then inquired as to the nature of the emergency. The foreman reported back that the claimant stated it wasn't any of the superintendent's business what the emergency was. The superintendent decided to check into the matter and proceeded to the location where the claimant was left by the foreman.

Upon the superintendent's arrival, he found the claimant talking on the telephone. The superintendent told the claimant to hang up the phone, and the Carrier alleges the claimant refused to do so. The superintendent then took the receiver from the claimant's grasp and hung up the telephone.

The superintendent then inquired who the claimant was talking to and was advised he was talking with his Union General Chairman. A verbal altercation ensued which ended with the claimant returning to work. Shortly thereafter the claimant informed the superintendent that his shoulder was hurting which had been caused when the superintendent took the telephone receiver from him.

The claimant thereafter returned to the office and filled out Form 1421 (on job injury). After the claimant had filled out the form, he was called into the superintendent's office and given notice to attend an investigation. Pursuant to the investigation the claimant was discharged for violation of Rules 14, 16 and 19 of the General Rules for the Guidance of Employees. The claimant was later

reinstated to service on February 27, 1980 with the understanding that the Organization could progress the claim for time lost.

The Organization contends that the superintendent grabbed the claimant by his arm and jerked the receiver from his hand, and further that when the claimant stated his arm was hurting and requested to be taken to a doctor, he was instead taken before the superintendent who allegedly became enraged and again engaged in a verbal altercation with the claimant.

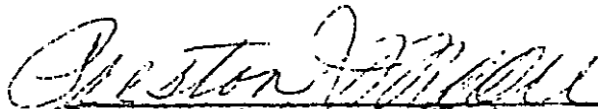
The claimant was taken to a doctor for examination, and the doctor stated he could find no evidence of an injury but that the claimant was experiencing minor muscle spasms.

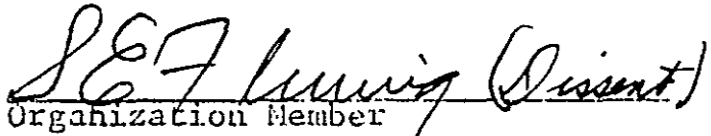
Rules 14, 16 and 19 are at issue herein. The claimant was guilty of not hanging up the telephone when so instructed by the superintendent. However, the superintendent's conduct thereafter is no better than that of the claimant and was certainly not justified under the circumstances.

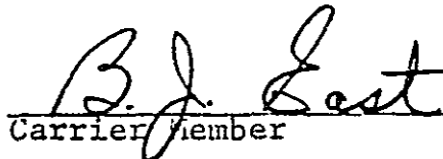
The superintendent was just as guilty of a violation of Rule 16 as was the claimant. For that reason it is the opinion of the Board that the blame in this case must be shared. Under the evidence herein, the Board finds that the discipline herein is excessive, and the Carrier is directed to pay the claimant for time lost commencing November 8, 1979 through and including February 26, 1980.

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