AWARD NO. 164
Case No. 198

PUBLIC LAW BOARD NO. 1782

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to permanently remove claimants from service was unjust because substantial evidence was not introduced in the investigation transcript, and even if the Carrier had proven the charges against claimants, decision of permanent removal would be excessive discipline.

2. That the Carrier be directed to reinstate claimants to service with seniority, vacation, all rights restored and pay for all wage loss beginning September 22, 1981 continued forward and/or otherwise made whole.

FINDINGS: This Public Law Board No. 1782 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 claimants were charged with reporting to work under the influence of intoxicants at 8:00 p.m. on September 22, 1981 in Montgomery, Texas. Pursuant to the investigation the claimants were dismissed from the service of the Carrier, and the Organization has filed this claim requesting they be reinstated and paid for all time lost.

The testimony of record is refreshing. The claimants did not deny that they were drinking. Some admitted they were drunk, three of them admitted consuming a half-pint of whiskey, as well as several beers. The claimants did not report for work because they were drunk.

The evidence of record indicates that one of the claimants was upset because his cousin had had a bad experience the previous Tuesday. There is no record or evidence that the claimants herein were alcoholics, and apparently they just decided to go on a drunk.

Employees should be aware that this is a serious offense and one which cannot be condoned by the Carrier. The claimants were not on duty, but were in their bunk car and were subject to duty. They failed to report for duty, and certainly discipline was justified.

However, in the present case it is the opinion of the Board that permanent dismissal is too severe. This opinion does not indicate

that an employee is entitled to one free "drunk." In some instances the first charge of being under the influence of intoxicants would justify discharge. All four claimants should be aware that a future incident of this type should and probably would result in permanent discharge.

The Carrier is directed to reinstate the claimants after a six month period of time without pay for time lost providing they have submitted themselves to a rehabilitation program approved by the Carrier.

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