

PUBLIC LAW BOARD NO. 1582

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 remove Claimant Ashby from service was unjust because substantial evidence was not introduced in the investigation transcript, and even if the Carrier had proven the charges against claimant, decision of permanent removal would be excessive discipline.

2. That the Carrier be directed to reinstate claimant to service with seniority, vacation, all rights restored and pay for all wage loss beginning September 30, 1981 continued forward and/or otherwise made whole.

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 the dispute herein the claimant was charged with the possible violation of Rules 1, 2, 7, 15, 16 and 17 of the General Rules for the Guidance of Employees, Form 2626 Std. The act involved was an alleged altercation between the claimant and Foreman S. G. Miller at Navasota, Texas at approximately 8:00 P.m. on September 24, 1981.

An investigation was held on September 30, 1981. The claimant appeared and testified that on September 24 he was assigned to Extra Gang No. 63, 8:00p.m. to 4:00 a.m. in the morning. The claimant further testified he was involved in an altercation with Foreman Miller and admitted that he assaulted Foreman Miller, throwing him to the ground and slapping him.

The claimant also testified that what he did was wrong and that Foreman Miller did not provoke him into the action which he took (Page 5 of the Transcript). The claimant further testified that he threatened Mr. Lopez and apologized to him the following morning.

L. I. Lopez, Foreman of Extra Gang No. 61, testified that he ran around to tell Steve to break it up, and the claimant told him to get away or he would "whip your little ass, too."

Jesse Delao testified that he saw the claimant come from the driver's side of the vehicle and go to the passenger side of the vehicle and pull Foreman Miller out, then shoved him back and hit

him in some way. He also testified it was dark and he didn't know if the claimant struck the foreman with his fist closed or with an open hand, but the foreman did go to the ground.

Assistant Roadmaster L. J. Henton testified that the claimant stated that "Miller had better get him a body guard because he was going to need it if he went to an investigation because he was going to get him, one way or another. He was going to get him." (Page 17 of the Transcript).

The Board has carefully examined all of the testimony involved in this dispute, and there can be no question but that the claimant was guilty. The claimant admitted that without provocation he did attack his foreman. The evidence also indicates that afterward he further threatened the foreman if the foreman testified at the investigation.

The claimant's wife has written a letter in behalf of the claimant addressed to the Chairman of this Public Law Board. Unfortunately the letter was read prior to the referee being aware of the nature of the contents.

The Board cannot accept letters from claimants or other persons in behalf of claimants or from the Carrier or representatives of the Carrier. The Board requests that the General Chairman advise the employees not to write or in any manner communicate with the Chairman. My office has been instructed in the future to return such letters to the sender and to refuse telephone calls under such circumstances.


This referee has heard literally hundreds of discharge cases and has never reinstated an employee who has struck a supervisor or a fellow employee and then later seriously threatened him in the event he testified at the investigation.

This referee is taking a great deal of latitude and is quite possibly committing error in reinstating the claimant, but nevertheless it is the finding of the Board that the claimant should be reinstated with seniority and all other rights unimpaired but without pay for time lost.

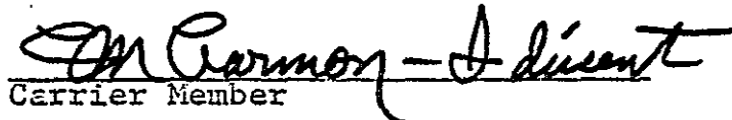
It is the further finding of the Board that if the claimant should at any time in the future be involved in any type of altercation, verbal or physical, permanent discharge is justified.

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

December 21, 1981