

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 Claimants Roberts and Simmons 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 October 19, 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 this dispute the claimants were charged with removing second hand cross ties from Company property at Panhandle and Pampa, Texas and using a Company truck for other than Company business without authority on September 18, 1981 and with possible violation of Rules 16 and 26 of the General Rules for the Guidance of Employees and Rules 752(c), 765 and 1296 of the Rules, Maintenance of Way and Structures dated 1975.

Claimant Roberts was employed as a track supervisor, and claimant Simmons was employed as a machine operator. The claimants drove a Company vehicle to a friend's home where they borrowed a truck and proceeded to pick up railroad ties from Company property at Pampa and Panhandle, Texas on September 18, 1981.

Claimant Roberts testified that they went to the Pampa scrap pile and loaded ties there and then went to MP 503.2, an old derailment site, and picked up nine ties there, then went to MP 508 where the section had changed out three ties during their tour of duty on Friday, September 18, and then proceeded on to Panhandle where they checked the scrap pile there.

There were approximately sixty used railroad ties in the truck when the claimants were apprehended by the police.

Claimant Simmons made a statement to the police which was typed by the District Attorney. In that statement claimant Simmons confessed that he and Roberts had planned the entire theft of railroad ties from the Carrier. The statement goes on at great length as to how they planned the theft of cross ties and what they would do if they were caught. In this statement claimant Simmons further stated that no one had mistreated, threatened or forced him in any way to make that statement or made him any promises to make the statement.

Claimant Roberts also made a statement, but his statement was in his own handwriting and was entirely contradictory to the statement made by claimant Simmons. Claimant Roberts stated that he was going to give \$63.00 to the Santa Fe for the ties which he was going to sell to a friend at Lake Meredith, and ten of the ties were for Mr. Duval for renting his truck, besides replacing the gas used.

Claimant Roberts further stated that approximately three weeks before he had had permission from Roadmaster Sanchez to sell twenty-eight ties to a lady in Pampa for \$63.00. He further stated in his statement that he was aware that the release was only good for the ties in Pampa, and he was not expecting that release to cover him at Pampa or anywhere really.

Claimant Roberts also stated that he thought he was only acting in the welfare of the railroad. He further testified that he was not exactly sure how many railroad ties were in the truck but he heard them say there were about sixty.

Claimant Simmons later denied his typed statement which he had signed, and testified that he signed this statement on the basis that the District Attorney had assured him he would assist him in getting his job back and that his cooperation would result in non-prosecution for theft.

There were many factors for the Carrier to take into consideration in assessing discipline in the instant case. Claimant Roberts did not have any papers for the railroad ties, and claimant Simmons said he heard claimant Roberts tell the man from whom he borrowed the truck that he would leave twenty-five ties on the truck when it was returned.

Claimant Simmons also testified that claimant Roberts asked him not to make so much noise and to act normal when the police arrived. This testimony, along with the testimony of claimant Roberts, is sufficient for the Carrier to reach a finding that the claimants did remove the railroad ties from Company property without authority and intended to sell them for their own purposes.

There is insufficient evidence for the Board to overrule the decision of the Carrier.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member

December 21, 1981