

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove claimants Altamirano, Hatley, Hoffman and Alaniz from service was unjust because substantial evidence was not introduced to record that sustained the charges and even if the Carrier proved the charges, permanent removal in this case is excessive and harsh discipline.
2. That the Carrier reinstate claimants to service with seniority, vacation, all benefit rights and pay for wage loss beginning October 23, 1981, continuing 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 misuse of Company credit cards assigned to the Hamlin Section truck by receiving cash from Partain 66 Service Station at Hamlin for alleged wash and wax work while performing such service themselves on July 22, August 5, August 24, September 9 and September 22, 1981. Also claimants Alaniz and Hoffman were charged with allegedly using the Company truck for personal purposes on the evening of September 22, 1981.

Claimant Altamirano testified that the Company truck was missing on the evening of September 22 and that claimants Hoffman and Alaniz drove the truck that evening and were taking it to get it washed and cleaned. He testified that the odometer indicated the truck had been driven 62 miles. He further testified that to his knowledge the truck had not been washed on the evening of the 22nd.

Claimant Altamirano also testified that there had been a problem at Hamlin since they had been using a Gulf Station there for washing and cleaning the trucks, and he had been advised that this station could no longer perform that service.

Claimant Altamirano further testified that he talked to a man in the presence of all his trackmen, and this man advised that he did not have enough help to wash the trucks, but if the employees could do the work after quitting time, he would pay them and the trucks would get washed. This witness did state that the employees were not supposed to wash the trucks on Company time.

Claimant Altamirano further testified that he made sure the regular driver who was responsible for driving the truck would be present when the truck was washed. He testified that the wash job was being paid for with Company credit cards. He conceded that he had not discussed this arrangement with any official of the Company.

This witness testified that when they obtained the new truck, they started using Phillips 66 Service Station, but they could no longer perform the washing and cleaning service, and after he made the arrangement for his fellow employees to wash and clean the truck, the Phillips 66 Service Station would accept a credit card and charge \$40.00 for cleaning and washing the truck. He testified that this was the normal charge for such service.

Claimant Hatley was the truck driver for the Hamlin Station. He testified that he authorized claimant Alaniz to take the truck to be washed on September 22. He also testified that he purchased gas for the truck on the evening of September 22. He testified that he signed a credit card receipt on September 22, 1981 at the Partain 66 Service Station at Hamlin, Texas which indicated that he bought 19.9 gallons of gasoline, one quart of oil and a wash and wax for \$40.00, making a total of \$67.60.

Claimant Hatley also testified that he noted at the time that the mileage on the truck was 13,400. He also testified that he inspected the truck on the morning of September 23 and the truck had not been washed. He testified that he did not note the mileage on the truck on the morning of September 23.

Claimant Hatley testified that he had an agreement with Phillips 66 to wash the truck, and they would hire two men to wash it for them, and then the Station agreed to employ claimants Alaniz and Hoffman and pay them to wash the truck. He also testified that on the afternoon of September 22 he was sick after he got off work, so he turned the keys over to claimant Alaniz so he could take the truck down to be washed.

D. R. Thomas, Special Agent for the Santa Fe Railroad in Lubbock, Texas was called to inspect the Hamlin Section truck on the morning of September 23, 1981. This witness testified that he examined the truck and that it had not been washed recently.

Also claimant Altamirano testified that on the morning of September 23 he was instructed by the Special Agent to take the truck to the service station and gas it up. There was no testimony as to how much gasoline was necessary to fill the truck.

At the outset Division Section Foreman Altamirano should have obtained permission from the Company before entering into such an arrangement with the Phillips 66 Service Station. An arrangement

of this nature would have made it impossible for the employees to charge for gasoline and for washing the truck when such service was not performed.

At the very least claimants Altamarino and Hatley erred in judgment and were possibly guilty of even greater sins. However, the evidence does not establish further guilt, and it is therefore the finding of the Board that claimants Altamarino and Hatley should be reinstated with seniority and all other rights unimpaired but without pay for time lost.

Claimants Alaniz and Hoffman were certainly guilty to a greater degree. These claimants took the truck on the evening of September 22, and if they filled the truck with gasoline and washed it, they did an extremely poor job. Certainly their services were not worth \$40.00.

Under the circumstances claimants Alaniz and Hoffman were guilty of a serious offense, and severe discipline is justified. Therefore, it is the finding of the Board that claimants Alaniz and Hoffman should be reinstated effective January 8, 1982 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