

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the dismissal of Northern Division Trackman R. G. Beard was unjust because it was not supported by substantial evidence and even if substantial evidence was introduced on record that proved the claimant guilty of alleged rule(s) violation, permanent dismissal from service is excessive and harsh discipline.

2. That claimant Beard be reinstated to service with seniority, vacation, all rights unimpaired and pay for all wage loss beginning December 21, 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 claimant was charged with entering into an altercation and threatening Foreman D. L. Wells on November 4, 1981 at South Street Crossing, Wynnewood, Oklahoma. An investigation was held, and pursuant to the investigation the claimant was found guilty and was dismissed from the service of the Carrier.

On November 4 a student foreman sent the claimant and another employee to get some axle grease and ten track bolts. They returned with the bolts and resumed work when Foreman Wells took C. R. Williams and the claimant to the company truck. The claimant contends that Foreman Wells instructed them to go with him to get a blood test, and Foreman Wells testified that he simply requested them to accompany him to the Wynnewood Depot where he could obtain instructions from a supervisor regarding how to handle the matter.

When Foreman Wells, C. R. Williams and claimant Beard approached the truck, apparently the claimant became enraged and commenced cursing the foreman, threatened to kill him and tried to kill him. Shortly thereafter the claimant again commenced yelling and cursing the foreman, and when student foreman Harland approached the claimant, he cursed him and said he would get him too.

Student Foreman Harland testified that at no time did he hear Foreman Wells tell the claimant that he was going to take him to the doctor to get a blood test. He also testified that he had known the claimant between one and two years, and he had been a good employee. He also testified the claimant apologized to him and that he wanted to apologize to Foreman Wells.

C. R. Williams, a truck driver for Extra Gang 67, and the claimant both testified that Foreman Wells told them he was going to take him to get a blood test. Another trackman testified that he heard the claimant cuss Foreman Wells but did not hear him threaten Foreman Wells.


The claimant admitted that he cursed and threatened Foreman Wells. The claimant also testified that if Foreman Wells had handled this matter in the right manner, such as just telling him to go home and that he was off until somebody could talk to him, nothing would have happened, and two wrongs don't make a right.

It is not wrong for the foreman to tell the two employees to come with him to the Wynnewood Depot. It is wrong for the foreman to tell the employees that he is going to take them to have a blood test. He may offer the blood test, but it is the employee's right to refuse a blood test.

However, even the foreman telling the employees he is going to take them to get a blood test does not justify an employee cursing and threatening to kill him. A simple refusal to take a blood test is sufficient, and the employee does not need cuss words to stress the fact that he is not required to take a blood test. Apparently this confrontation flared up a second time, and the claimant again began cursing the foreman, as well as the student foreman who was attempting to calm down the claimant.

When the Carrier is justified in believing that an employee with such a violent temper is a serious threat to supervisors and to other employees, the arbitrator does not have the authority to overrule the decision of the Carrier. If the referee has this authority, an employee with ten years of seniority would be reinstated after a reasonable period of time under these circumstances, but the offense which was committed by the claimant herein makes it impossible for the referee to overrule the decision of the Carrier.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization MEMBER


Carrier Member

Dated at Chicago, Illinois
February 25, 1982