

PUBLIC LAW BOARD NO. 1582

PARTIES) THE 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 claimant Balderrama (seniority date February 18, 1970) from service was unjust.
2. That the Carrier now reinstate claimant with seniority, vacation, all benefit rights unimpaired and pay for all wage loss beginning May 12, 1982 continuing forward and/or otherwise made whole; because the Carrier did not introduce substantial evidence that proved that the claimant violated the rules enumerated in their decision, and even if claimant violated the rules enumerated in the decision, permanent removal from service is extreme and harsh discipline under the circumstances.

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 being under the influence of intoxicants and with being disorderly, insubordinate and quarrelsome. An investigation was held, and pursuant to the investigation the claimant was dismissed for being disorderly, quarrelsome and under the influence of intoxicants.

The Organization urges that the Carrier did not introduce substantial evidence to prove that the claimant violated the rules set forth in the decision, and even if such rules were violated, permanent discharge was harsh, arbitrary and unjust.

The record indicates that during the investigation the claimant was asked if he wished to have a representative present and he responded "No." The claimant admitted that he came to the Santa Fe Depot at El Paso, Texas at approximately 9:45 p.m. on April 15, 1982 and that he had had three or four beers.

The claimant testified that he was asked if he remembered being loud, boisterous and argumentative in the freight office, and he responded "No, I don't think so." When asked if he used vile or dirty language, he again responded "No, I don't think so." The claimant testified that he did not threaten any of the employees.

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The car clerk who was on duty that evening testified that claimant started attacking him with bad words, both in English and Spanish, and when he told the claimant he did not like it, the claimant again started calling him more names and advised him what he could do with the telephone. He further testified the claimant never did identify himself but simply insisted upon using the telephone for a long distance call, and he advised the claimant he was not authorized to allow anyone to use the phone for long distance. The car clerk further testified that in his judgment the claimant was under the influence of intoxicants.

A Special Agent for the Carrier testified that he saw the claimant walking to his car and that he called another special agent and observed the claimant very unsteady on his feet and having difficulty in walking over the rails and stumbling.

The Special Agent testified the claimant used coarse and vulgar language to another special agent, and when he attempted to calm down the claimant, the claimant used vile language toward him, and as the claimant spoke pieces of food shot out of his mouth and hit his face and shirt. He also testified he smelled a strong odor of alcohol on the claimant's breath.

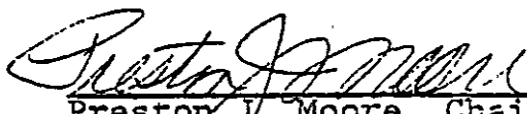
The Special Agent testified he walked the claimant toward his car but believed he was unable to drive. He also testified the claimant went on at great length cursing and abusing the other special agent, as well as the employee in the office who had refused him permission to use the telephone.

S. L. Nichols, the agent at El Paso, arrived and asked the claimant to come to his office, and when talking to the claimant, the claimant admitted drinking a few beers and agreed that the agent could take him to a motel and put him in bed.

Under the circumstances there can be no question but that serious discipline is justified. However, in view of the claimant's years of service with the Carrier (13 years) and his unblemished record, it is the opinion of the Board that the discharge should be reduced to a six month suspension. The Carrier is directed to reinstate the claimant on November 12 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