

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 Plains Division Trackman W. R. Gonzales 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 July 28, 1982 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial evidence that proved the claimant violated the rules enumerated in their decision, and even if claimant violated the rules enumerated in the decision, permanent dismissal from service is extreme and harsh discipline under the circumstances.

FINDINGS: This Public Law Board No. 1532 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 alleged misrepresentation of facts, withholding information and other irregularities in connection with an alleged injury claimed by him at approximately 2:00 p.m. at Mertzon, Texas while employed as a trackman on the Big Lake Section. Pursuant to the investigation the claimant was found guilty of violating Rules 14 and 16 and was discharged from the service of the Carrier.

There is a great deal of testimony which had to be studied carefully. The claimant had been employed for approximately one year and five months as a trackman.

The claimant testified that at approximately 2:00 p.m. on June 28, 1982 he experienced a sharp pain as he was bending down, squatting down to get a shovel full of ballast. He testified that trackman Frank Gander was there and asked what was wrong with him, and he replied he had a low back pain but that he was O.K.

The claimant further testified that he started walking a few steps when Section Foreman Esparza saw him using the shovel as a crutch and asked what was the matter, and claimant replied he had a pain in his lower back. He testified that he went to the truck and got a drink of water and tried to go back to work but was unable to do so because of the pain in his lower back.

The claimant also testified that he was still having pains in his lower back while they were riding in the truck to Big Lake, Texas. He testified that he did not tell the foreman that he was going to a doctor. He then testified that the following morning he went to the emergency ward in Big Lake, Texas.

The claimant testified that he was not aware what a 1421 Form was and did not know whether he had filled one out or not, but he had signed some papers.

The claimant was asked if he had been involved in any activity off duty which could have resulted in the alleged back injury, and he stated:

"No, I was involved in a misunderstanding with Trackman Ruben Perez which happened Thursday night at 2:00 o'clock in the morning at the night club in San Angelo. As far as a back injury at the time of the misunderstanding, there was none whatsoever. No back injury, no back pain, no injury as far as my back was concerned."

The claimant admitted he was knocked down but he stood up, walked away, went home and cleaned up, and when he was knocked down, he landed on his right side. The claimant testified he was in good physical condition going back to work Monday morning. The claimant testified that he did not work on Friday, June 25.

A Special Agent testified that he interviewed Miss Ernestina Mendez, and she told him she and Miss Hernandez had gone to a night club with the claimant on Thursday night and at 2:00 a.m. when the club closed she and her girl friend went to a convenience store for a sandwich, and when they returned they saw the claimant coming toward the car, and he had blood on him. She further stated that claimant said he had got into a fight there at the club and somebody knocked him on his butt.

The Special Agent testified that he then contacted Alfonso Rodriguez who stated that he had not seen much of the fight but heard the commotion and looked over, and the claimant was getting up from the ground and was bleeding from a cut on his head, and another man by the name of Ruben Perez hit the claimant two or three times after he had gotten up.

Safety Supervisor T. P. Allen testified that he investigated the matter herein and interviewed Mr. Esparza, Mr. Sturm, D. Hoyos and Mr. Longoria. He testified that Mr. Esparza told him that about 1:00 p.m. he noticed the claimant by the truck getting a drink of water and asked if there was anything wrong, and the claimant said he had a cramp in his back; the claimant then got a drink of water and went back to shoveling screenings.

Supervisor Allen testified that Mr. Sturm told him he was on duty Monday Morning when the claimant came to work, and he noticed the claimant had various scratches on his body, on his nose and around his elbow. He testified Mr. Sturm told him he asked the claimant what had happened, and claimant said he had been skiing over the weekend and had incurred the scratches. He further told Mr. Allen that when he noticed the claimant going to the truck to get a drink of water he was limping a little bit and when he asked what was wrong, claimant stated he had cramps in his back.

Supervisor Allen also testified he discussed the matter with D. Hoyos who was on duty Monday morning, June 28, and he told him claimant was quieter than usual and claimant told him he had been involved in a fight. He also told Mr. Allen that the claimant was working slower than usual all day long.

Supervisor Allen testified that Mr. Longoria told him he was on duty on the morning of June 28 and when the claimant came to work, he noticed that he was limping, had scratches on his nose.

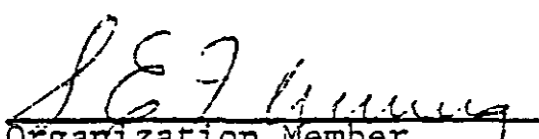
Supervisor Allen also testified that he went to the hospital and talked with Dr. Wright, and the doctor advised him that when he examined the claimant, the x-rays showed everything in the lumbo-sacral area to be normal, and the only area where he found any tenderness or pain was in the coccyx or tail bone area. The doctor advised Mr. Allen that this type of injury was not a symptom typical of a back strain, and it would be very rare for any type injury in that particular area to have occurred unless he had been knocked very hard on his tail bone.


After carefully examining all of the evidence, the Board finds that there is sufficient evidence for the Carrier to find that claimant was guilty of the violation as charged. This is a very serious violation, and the claimant had only been employed by the Carrier for a short time. Consequently there is no justification for setting the discipline aside.

AWARD: Claim denied.

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Preston J. Moore, Chairman

  
Organization Member

  
Carrier Member