AWARD NO. 205
Case No. 239

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Plains Division Trackman F. B. Garcia, Jr., 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 August 20, 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 allegedly failing to give the facts and information concerning a personal injury to himself occurring at Fort Stockton at approximately 3:30 p.m. August 4, 1982 while on duty, and allegedly falsifying his application for employment dated December 1, 1981 by answering "No" as whether he had ever been convicted of a crime, and also for being absent without authority on August 5, 6, 9, 10 and 11, 1982, and also charged with being involved in horseplay on Company property at approximately 4:00 p.m. on August 6, 1982.

Pursuant to the investigation the claimant was found guilty of violating Rules 1, 2, 14, 15, 16 and 17 and was dismissed from the service of the Carrier.

The transcript contains 54 pages, and there were several exhibits submitted to be considered by the Board herein.

The Organization contends that the claimant may not be disciplined for falsifying an application for employment on the basis of Rule 2 of the Trackmen's Agreement. The Board has examined that rule and simply finds that it provides for a probationary period of sixty days. This case does not involve a probationary period but does involve the falsification of an employment application, and many awards have held that an employee may be discharged for the

falsification of an application for employment provided such falsification in answers probably would have caused the Carrier to reject his employment.

The claimant testified that he was injured on the job and when he was questioned as to whether he was involved in horseplay on Company property, he answered: "What do you mean, horseplay? I never horseplay on the job, unless somebody can prove it."

The claimant further testified that he had never been convicted of a crime. However, he later conceded that he had been convicted of a misdemeanor of "transporting aliens."

Track Inspector Aguilar testified that the claimant told him he had hit his ribs with a clawbar and that the head of the spike had come off and later told him he was loading either the rail saw or the drill which had twisted, and he thought it was his back or ribs which were hurt.

J. R. Ramirez testified that the claimant was talking to him on the afternoon of August 6, 1982 saying that he didn't look too heavy and just picked him up and shook him. He further testified that he weighed approximately 220 to 225 pounds. This is not the act of a man who has a back injury.

Trackman Rodriguez testified that he was assigned to Extra Gang 62 on August 4, 1982 when the claimant allegedly hurt himself, and the claimant did not tell him anything about hurting himself on that afternoon. He also testified that he talked to the claimant about quitting time on that date.

Trackman Farrar testified that he was working with the claimant on the afternoon of August 4, 1982, and the claimant did not tell him that he had injured himself that day. He further testified that on the night of August 5, 1982 the claimant advised him that he had pulled a muscle or something in his back.

Foreman J. A. Vega testified that he did not give the claimant any authority to be absent on August 6, 9 and 10. He also testified that the claimant did not any time during the week of August 2 through August 6 advise him that he had sustained a personal injury on the job. He further testified that on August 6 the claimant advised him that he had been to see a doctor and told the doctor that he was injured on the job. He also testified that he saw the claimant picking up J. R. Ramirez in a bear hug.

The evidence establishes that the doctor gave the claimant a release to return to work on August 6. The Board has carefully studied all of the evidence, and it appears there is sufficient evidence for the Carrier to make a finding that the claimant was

guilty as charged. Under the circumstances there is no justification for setting the discipline aside.

AWARD: Claim denied.

Preston J. Moore, Chairman

Organization Member

Carrier Member

DATED AT CHICAGO, ILLINOIS
NOVEMBER 12, 1982