

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 Southern Division Trackman R. H. Gilley 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 September 27, 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 throwing tools toward the Company truck and threatening his foreman. Included in the charge was a possible violation of Rules 2, 14, 16, 18 and 31B of the General Rules for the Guidance of Employees, Form 2626 Standard. Pursuant to the investigation the claimant was removed from the service of the Carrier for violation of Rules 14, 16, 18 and 31B.

The transcript contains 36 pages of testimony, and there are several exhibits submitted by the parties. All of the testimony and evidence has been carefully studied.

The evidence is clear and convincing that three employees were throwing tools down by the truck, which is a violation of the rules. The testimony indicates that they were doing so in a careful manner and that the tools were those which would not be damaged by throwing. Under the circumstances this is certainly not a serious violation. The claimant even called out to ascertain the location of the truck driver before throwing the tools down. This is verified by the testimony of the claimant, the truck driver and another employee.

There is some conflict in testimony as to who threatened to whip the other. The evidence is persuasive that the claimant threatened to

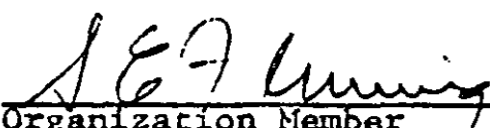
whip the foreman, but very shortly thereafter withdrew the statement, and the foreman certainly did not take the threat seriously.

Some discipline is justified, but under the circumstances herein, it is the opinion of the Board that the discipline has served its purpose, and the Carrier is directed to reinstate the claimant 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

DATED AT CHICAGO, ILLINOIS  
NOVEMBER 12, 1982

  
Carrier Member