

PUBLIC LAW BOARD NO. 1582

Award No. 271  
Case No. 307

PARTIES  
TO  
DISPUTE:

The Atchison, Topeka and Santa Fe Railway Company  
and  
Brotherhood of Maintenance of Way Employees

STATEMENT  
OF CLAIM:

1. That the Carrier's decision to remove Trackman S. C. Bergen from service and assess Trackman D. L. Replogle's record thirty (30) demerits after an investigation May 7, 1984 was unjust.
2. That the Carrier now reinstate Claimant Bergen with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held May 7, 1984 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved that Claimant Bergen violated the rules enumerated in their decision, and even if Claimant Bergen violated the rules enumerated in the decision, permanent removal from service is extreme and harsh discipline under the circumstances.
3. That the Carrier now expunge thirty (30) demerits from Claimant Replogle's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation May 7, 1984 because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates Claimant Replogle is guilty of violation of rules he was charged with in the Notice of Investigation.

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 claimants were notified to attend an investigation to determine their responsibility in connection with an altercation occurring in Waynoka Yards on April 26, 1984. Pursuant to the investigation, Claimant Bergen was dismissed from the service of the Carrier and Claimant Replogle was assessed 30 demerits.

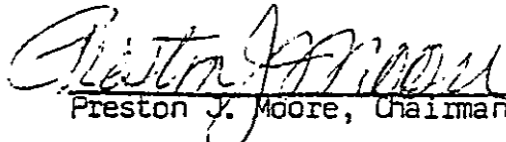
The transcript indicates that Claimant Bergen requested to use a pick three times from Claimant Replogle and each time Claimant Replogle refused. Claimant Bergen stated that he only wanted to use it for just a moment. Claimant Bergen alleges that Claimant Replogle used obscene language towards him, and Claimant Bergen admits striking him.

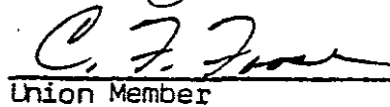
Fighting is a serious offense and justifies very serious discipline. Employees must be cautioned that serious discipline up to and including discharge may be assessed for such violation.

After reviewing the evidence, it is the opinion of the Board that permanent dismissal of Claimant Bergen is too severe and directs the Carrier to reinstate the claimant with seniority and all other rights unimpaired but without pay for time lost, after he has been out of service for 90 days. That portion of the claim for removal of the thirty demerits assessed Claimant Replogle's record is denied.

AWARD: Claim in behalf of S. C. Bergen sustained as per above. Claim in behalf of D. L. Replogle denied.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.

  
Preston J. Moore, Chairman

  
Union Member

  
Carrier Member

1569P

Dated at Chicago, Illinois  
July 15, 1984