AWARD NO. 333
Case No. 369

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: That the Carrier's decision to disqualify Albuquerque Division Trackman/Truck Driver J. D. Gabaldon from his position was unjust; That the Carrier now lift the disqualification of Trackman/Truck Driver from Claimant Gabaldon's record as a result of the investigation held September 12, 1985, reinstate his rights to the position and pay the difference between the position of Trackman/Truck Driver and Trackman beginning July 23, 1985, continuing forward and/or otherwise made whole because the Carrier did not introduce substantial, creditable evidence to prove that the Claimant should have been disqualified, and even if the Carrier had introduced substantial evidence supporting their action, disqualification as Trackman/Truck Driver on an indefinite basis 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 notified to attend an investigation on September 12, 1985, which had been requested by the claimant. The investigation was held at Winslow, Arizona, concerning the claimant's alleged inability to properly handle and discharge the duties of a truck driver's position. Pursuant to the investigation the claimant was disqualified from the position of Trackman/Truck Driver.

The Organization has filed this claim, requesting that the claimant be reinstated to the position and be paid the difference between the position of Trackman/Truck Driver and Trackman beginning July 23, 1985, and be made whole.

The Track Supervisor at Belen, New Mexico, testified that the claimant herein worked under his supervision. He testified that the claimant refused to get under a truck to switch some wires and that on October 12, 1984, when the claimant was driving into Suwanee he ran over an 18-inch telegraph pole that had been cut up and was laying on the ground and failed to stop to determine if the men had been hurt or jarred.

He further stated that on October 16, 1984, the battery was dead,

so he instructed the foreman to leave the truck there and to take their own vehicles and pay the mileage and he would have a wrecker pick up the truck. He stated that by the time he got there with the wrecker at approximately 9:50 a.m., the truck driver was still there trying to start the truck and that he instructed him to leave the truck there and to report to work at Rio Puerco.

He further testified that on January 11, 1985, that Dalies truck and the Laguna truck were stuck in the same spot and that the Laguna truck backed up approximately 200 feet to the highway and "got out real good," but the claimant tried turning around in close clearance and buried the truck where it had been snowing for two days.

He then testified that on March 7, 1985, the gang was going out to MP 22.3 when the radiator sprung a leak and the claimant kept killing the engine so they couldn't use the truck. He testified the claimant managed to get the truck to the shop in Belen, the Ford Garage, and left it there. He stated that he picked it up the next day, and the only problem was that the radiator hose was leaking. He testified that they lost a day's work because the claimant failed to detect the cause of the leak.

He also testified that he had instructed the claimant about using blocks for the outriggers and had on occasion come up to the gang where they were not using the blocks and outriggers.

He testified that he sent the claimant in to get the truck repaired on Saturday, and the claimant didn't bring it in until Monday morning about 9:00 a.m., which held the gang up for a considerable amount of time. He also stated that the claimant took too much time to get from one place to another.

He testified that on April 15, 1985, the gang was working at MP 30 heading back to Dalies when the truck backfired and had a great loss of power. He testified that the claimant proceeded without stopping the truck to check under the hood and made arrangements the next morning to have the truck picked up at Dalies with a wrecker. He further stated that the claimant had the truck at the Ford Garage in Belen and had driven it in himself, which resulted in a burned carburetor and down time.

He testified that in each of those instances he talked to the claimant and advised him of his responsibilities. P. A. Vaughn, Roadmaster First District, Albuquerque Division, testified that he had witnessed two instances where the claimant thoroughly abused the truck and paid no attention to instructions to cease the same. He stated that the first incident was when the claimant ran the truck off into a rather large mud hole with a rail trailer attached when he could have gone around it. He stated that the claimant continued to abuse the truck by trying to get it out when it was completely stuck in the mud and almost burned up the clutch and

transmission despite instructions to stop when he personally issued them.

He testified that on another incident he saw the claimant run over an 18-inch stubbed-off pole and the claimant never stopped the truck to see if there was any damage.

He testified that he had discussed the duties of a truck driver with the claimant.

B. D. Sandoval, Trackman, testified that he was a truck driver and was familiar with the claimant and he believed the claimant drove the truck in a safe manner and knew how to operate the boom and machine and maintained the truck. Sandoval further testified that Track Supervisor Rael would overrule his previous instructions regarding unloading scrap. Mr. Rael testified that it was true he did on occasion overrule his own instructions.

There is a conflict in testimony between Mr. Sandoval and Mr. Rael regarding the jar when the truck hit the stump protruding approximately 18 inches from the ground. Mr. Sandoval stated it was just a small jar; Mr. Rael stated that the front wheels and the rear wheels both went over the stump and he saw the tools shifting quite a bit and the truck jumped pretty high off the ground. Mr. Vaughn also testified that the truck had a very violent reaction when the claimant drove over the stump.

The claimant testified that he did not refuse to get under the truck and attempt to check the two-speed. He stated it was a kinked cable and when he moved it, it worked, but then the truck would hit a bump or something, and it would come back off. He testified that the truck needed mechanical repair beyond his ability to perform.

The claimant testified that on October 17, 1984, the transmission locked up and the battery had gone dead. He testified that the trackmen pushed it out of the garage and they tried to jump it under the authorization of the foreman, but the truck did not start. He testified that all the men had left for Rio Puerco, except Foreman Sanchez and himself, who had requested that he stay and see if they could start the truck. He testified at that time Gilbert drove up and Jimmy authorized him to park the truck north of the section house for the wrecker to pick up and tow it back into the Chevrolet Garage.

The claimant testified that on January 11 his truck did become stuck, but the truck did tend to spin and stuff like that. He stated that the Laguna Section gang did back up and tie a chain on it for safety, but the truck made it out of there under its own power. The claimant further testified that he did not receive any orders on the radio from Mr. Vaughn but that Mr. Sanchez directed him to try and back it up and go forward again, and Mr. Rael stated: "Give it a little try, it looks like it's about to come out."

The Board has carefully reviewed the testimony of all the parties, including the rebuttal testimony by Carrier witnesses. The claimant was not disqualified as a truck driver for being insubordinate.

There is a great deal of confusion as to exactly what occurred on the incidents set forth by the Carrier. The evidence is sufficient to indicate that the claimant is not performing as a truck driver as he should, and the evidence is indicative that the claimant did not get under the truck and attempt to make the switch of wires, which apparently he could have done.

There is no question but what discipline is in order. The only issue before the Board is whether or not disqualification as a truck driver is justified. After due deliberation, it is the opinion of the Board that a suspension of a truck driver for the period involved is justified. Further, the Board finds that a warning should be issued to the claimant that failure to properly care for his truck and to perform his duties as a truck driver in a responsible manner will result in permanent disqualification as a truck driver.

The Carrier is directed to reinstate the claimant as a Trackman/ Truck Driver and issue the written warning as set forth above.

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

Dated at Chicago, Illinois

November 4, 1985

C. F. Foose
Union Member

L L Pope
Carrier Member