

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: That Claimant M. G. Simmons be compensated for all wage loss and/or made whole beginning May 6, 1985 and continuing until June 17, 1985 when he was advised of his reinstatement with all seniority and benefit rights restored but without compensation for wage loss by Superintendent Caldwell.

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 in Dallas, Texas, on February 4, 1985, to determine the facts concerning the report of an alleged altercation between P. M. Trinidad and the claimant. P. M. Trinidad is Section Foreman of Section 22 at Dallas, Texas. M. G. Simmons is a Trackman on Section 22.

Foreman Trinidad testified that he had been off sick and that Monday morning, February 4, was his first day back at work. He testified that he unlocked the pickup to get in and started it, and there was a bunch of trash in the back seat and front seat, so he gathered those things together and a sack of lunch, too, but he didn't know it was a lunch at that time because they usually leave trash and some food. He testified that after two or three days, it started to smell. He asked the men if the lunch belonged to any of them and they said, "It don't belong to me", so he gathered it up and took it to the dumpster.

He testified that when he went inside, Claimant Simmons asked him if he had seen a sack of lunch. He said, "I saw one, but I didn't know it was your lunch and I gathered everything up thinking it was trash too and put it all in the dumpster." He testified that he then went to work.

At the end of work around four o'clock they were bringing the tools and loading them in the pickup. When he started the pickup, Simmons again asked why did he throw away his lunch, and "I tried to answer him and he started cussing me. He always has, you know" and then he wrote this letter. "I stated in my letter that this was not the first time he had done this. So, I was walking toward the pickup and when I got pretty close to the pickup, Simmons was stooping over to get the orange cone and I pushed him and that was

all. I didn't push him hard enough to make him stumble or even to fall, and after that we got in the pickup." He testified that P. J. Rogers was there, and nothing else was said from the time they left the job until they returned.

Foreman Trinidad was asked why he shoved the claimant, and he stated that "He was cussing me, using foul words, and I never use these on anybody, and I didn't like what he was saying to me. It was unrespectable and everything, so I just shoved him." He stated that he did not strike the claimant.

The claimant testified that he brought some food to work with him, and he laid it on top of the tool box and Foreman Trinidad threw his food away. He further testified that the foreman saw him putting his food on top of the tool box. He stated that evening he asked if the foreman was going to reimburse "me my money and he said no, and that if he saw any more food on the truck, he'd throw it away again, so I told Pete he should reimburse me my money and that he was wrong for what he did, but that's the way he is, and I walked off and left him." He testified that he had a tool in his hand to put in the truck and turned to pickup the cone and "I was being hit. I didn't know he was going to hit me." He testified that Foreman Trinidad hit him on the side of the face. He testified that P. J. Rogers came between them.

Trackman C. G. Lozano testified that he did not see or hear anything but was present all of the time. Trackman P. J. Rogers testified that on the afternoon in question they were getting off work and as he was putting up his tool, he turned around and Trackman Simmons was bent over and Foreman Trinidad was going up under him and hitting him on the chest or head. He testified that the claimant was backing away toward the truck, and he came between them and that Mr. Trinidad went to the other side and got in the truck. He testified that it looked like Foreman Trinidad hit the claimant in the chest but that he was not really sure.

Pursuant to the investigation in this case the claimant was dismissed from the service of the Carrier May 6, 1985. Thereafter he was reinstated effective June 17, 1985, and the Carrier allowed the Union to advance this claim for pay for time lost.

After reviewing all of the evidence of record, the Board finds that there is no justification for disciplining the claimant herein. The Carrier is directed to pay the claimant for all 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


Union Member


Carrier Member

Dated at Chicago, Illinois
January 2, 1986