

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 assess Claimant Y. King ten (10) demerits, Claimant J. L. Gaddy ten (10) demerits and Claimant T. Garcia twenty (20) demerits after investigation August 7, 1987 was unjust.

2. That the Carrier now expunge ten (10) demerits from Y. King's record, ten (10) demerits from J. L. Gaddy's record and twenty (20) demerits from T. Garcia's record, reimbursing them for all wage loss and expenses incurred as a result of attending the investigation August 7, 1987 because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates Claimants are guilty of rules they were 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 claimants Yazzie King, Sr., T. Garcia and J. L. Gaddy were notified to attend a formal investigation on July 24, 1987 concerning the injury to Yazzie King, Sr. on June 24, 1987 at approximately 10:45 a.m. near Mile Post 43.5, when Yazzie King Sr. allegedly used improper work procedures resulting in his injury, and when he allegedly failed to complete Form 1421 Standard in a timely manner in violation of Rules 1, 2, 4, 14, 16, 24 and 30, General Rules for the Guidance of Employees, Form 2626 Standard, effective 1978, and Rules 1, 2, 3, 4, 9, 120 and 196 Safety Rules for Santa Fe Employees, Form 2629 Standard, effective April 1, 1976.

Also when J. L. Gaddy allegedly failed to prevent Yazzie King, Sr. from using improper work procedures resulting in Mr. King's injury in violation of Rules 1, 2, 4 and 24, General Rules for the Guidance of Employees, Form 2626 Standard, effective 1978, and Rules 1, 2, 3, 4, 120 and 196, Safety Rules for Santa Fe Employees, Form 2629 Standard, effective April 15, 1976.

Also when T. Garcia allegedly allowed Yazzie King, Sr. to use improper work procedures resulting in Mr. King's injury and allegedly did not provide Mr. King with prompt medical attention and allegedly failed to provide all information regarding

Mr. King's injury, in violation of Rules 1, 2, 4, 14, 16 and 24, General Rules for the Guidance of Employees, Form 2626 Standard effective 1978 and Rules 1, 2, 3, 4, 8, 9, 120 and 196, Safety Rules for Santa Fe Employees, Form 2629 Standard, effective April 15, 1976, and Rules A, B, D, E, I, 621, 622, 800 and 1051, Rules Maintenance of Way and Structures, Form 1015 Standard, effective October 28, 1985.

Pursuant to a postponement the investigation was held on August 7, 1987. Pursuant thereto J. L. Gaddy was assessed ten demerits for his responsibility in violation of Rules 1 and 16, General Rules for the Guidance of Employees and Rules 1 and 3 of the Safety Rules for Santa Fe Employees; Yazzie King, Sr. was assessed ten demerits for his responsibility in violation of Rules 1, 2, 4 and 16, General Rules for the Guidance of Employees and Rules 1, 3 and 196 Safety Rules for Santa Fe Employees; T. Garcia was assessed twenty demerits for his responsibility in violation of Rules A, I and 1051, Rules Maintenance of Way and Structures.

The transcript contains fifty pages of testimony, all of which has been carefully considered by the Board. Claimant King was asked if he understood the rules, and he replied that he only read a little bit of English. The rules were then translated by Mr. Chee in Navajo. Thereafter claimant King stated that he understood the rules. Claimants Gaddy and Garcia both stated that they were familiar with the rules.

Mr. King testified that he was assigned to the Dalies Section as a trackman on June 24, 1987, that claimant Garcia was his foreman and that claimant Gaddy was a trackman on the Dalies Section on that date.

Claimant King testified that he was injured in an incident that occurred between 10:00 and 10:45 a.m. at Mile Post 43.5 and it was on top of the bridge at the south track near South Garcia. He stated that other members of the Section, Jimmy Sanchez, Mike Mendoza, J. L. Gaddy and Tom Garcia, were part of the Section Gang. He stated that Mr. Gaddy was working with him at the time of the injury. He also stated that Mr. Gaddy and Foreman Garcia witnessed the injury.

Claimant King further testified through Mr. Chee that around 10:45 a.m. they were replacing some ties on a bridge on Dalies Section, and they had picked up a bundle of ties and put it on a push cart to replace ties on the bridge. He stated they replaced the ten ties that were tied down and used an axe to break the band on the ties.

Mr. King then testified he was having a hard time breaking the band around the ties using the axe, and at that time he was told to hurry up -- "You are wasting my time." He said that Mr. Gaddy told him to hit the band in between the ties, and

he did, and this was as far as he could remember. He stated that the ties fell on him, and after the ties fell on him, he doesn't know who or how, but they started moving the ties off of him, and they picked him up and set him against some old ties, and that was when the foreman got on the radio and starting calling.

Claimant King testified that he did not know who the foreman was calling, but he started calling around. He stated that he noticed his leg was already swelling, and he asked Mr. Gaddy to take his safety shoes off.

Mr. King then stated that after a while the foreman made contact, and a guy by the name of Virgil Ford came by and picked him up and took him to the hospital in Belen. He stated when he got to the Belen Hospital, his leg was x-rayed, and he was notified his leg was broken, and the hospital did not have a bone specialist, and he was advised to be moved or go elsewhere. He testified he wanted to go to the hospital near his home, so he was taken by a private vehicle to Gallup, New Mexico to the Lovelace Gallup Medical Center.

Claimant King also testified that he was having trouble cutting the bands on the bundle, and he was standing on the side when he was doing so. He stated he was standing between the rails and Mr. Gaddy was standing right behind him. He stated that Mr. Garcia was about five to ten feet away from him and was looking at him while he was standing alongside the tie bundle cutting the bands.

Mr. King testified that there are twelve ties in a bundle and there are two bands on each bundle. He stated that no one had suggested to him that he cut the bands from the end of the bundle instead of from the center. He testified that he had cut the bands a few times but usually had used a tin snip. He stated that he normally cut the bands at the end of the ties but at that time he was asked to hurry.

Claimant King testified that Roadmaster Vaughn met him at the hospital. He stated that he told Mr. Vaughn he did not read English and could not fill out Form 1421. He stated that he later filled out Form 1421 when Mike Cook, a Safety Supervisor, and Lorraine Keene were present.

Mr. King stated that at the Belen Hospital they put a splint on his leg and gave him pills for pain. He stated they also took x-rays and suggested he go to another hospital where they had specialists.

Claimant King testified that he was transported by personal vehicle to Gallup, New Mexico which was approximately 200 miles. He stated he was offered the option of flying to Gallup in a medical helicopter or plane, but he was scared since he was afraid to fly. He stated that he went to three hospitals before

the Medical Center could take him in because the other hospitals did not have a bone specialist. He stated he was finally treated at McKinley General Hospital.

Claimant King then stated that the first time he saw any Santa Fe personnel afterward was when Mike Cook came to his house, and he filled out Form 1421. He stated there was a second time that was just a follow up with some questions.

Mr. King testified that he did not believe Mr. Vaughn was capable of interpreting the 1421 Form for him in his native language and stated that Mr. Cook brought Lorraine Keene as an interpreter to fill out Form 1421.

J. L. Gaddy testified that he was a witness to the incident which occurred to Mr. King but did not actually see the ties fall and did not see Mr. King cutting the bands. He stated that he was about ten feet away from Mr. King.

Claimant Gaddy testified that he did suggest to Mr. King that he cut the bundle of ties with the axe in a crack between the ties. He stated he did not say anything to Mr. King about not standing at the side of the tie bundle. He stated that he said it would be easy to cut it right there in the crack between the ties.

Mr. Gaddy then stated that Foreman Garcia did not try to stop Mr. King from trying to cut the bands on the side of the ties but just told him to hurry, that he was wasting time. He stated the bundle of ties was set to one side of the push cart, and that was the reason they fell off when the bands were cut. He stated that if you stood at the end when you cut the ties, the ties could not fall on you. He stated that the foreman did not instruct him or Mr. King to cut the bands from the ends of the ties.

Tom Garcia, Track Foreman, testified he had been a track foreman for nearly nine years, and he was the foreman on the Dalies Section on the date in question. He stated they were putting some ties in at Mile Post 43.5, South Track, South Garcia. He stated he had the men take the old ties out and remove the ballast. He stated they had to take the old ties out sideways because they were on a bridge.

Foreman Garcia testified that he had Mr. Gaddy and Mr. King working on the south side and Mr. Sanchez and Mr. Mendoza were working on the north side of the track. He stated that Mr. Gaddy and Mr. King got the axe, and Mr. King was on the north side of the bundle on the end of the ties when he cut the first band. He stated Mr. King hit it a couple of times on the top and then finally hit it on the side, and it broke the first band.

Mr. Garcia then testified that Mr. Mendoza came around in front of Mr. King, walking west across the tracks. Mr. Garcia stated he was sitting at the bottom looking at the men when Mr. Mendoza

walked across, and he told Mr. Mendoza "Mike, you'd better move out of the way; they're going to hit you," and Mr. Mendoza moved out of the way. Mr. Garcia then stated that he turned around this way, and we heard a bang. He stated that when he turned back there were three ties on Mr. King, and he was pinned under the three ties.

Mr. Garcia further testified that he kept asking Mr. King if he was O.K. but could get no response, and Mr. King started turning a grayish color, and it scared him. He stated they finally got Mr. King to move around a bit, and he seemed to come to and asked if we would remove his boot. He testified Mr. King stated it was the third time he had broken his ankle. He stated that he asked if it was alright to move him over to a pile of ballast and when Mr. King responded "Yeah," they did so.

Foreman Garcia further testified that he then went to the radio and talked to Mr. Vaughn and told him what the problem was. He stated that Mr. Ford came on the radio and said he was just west of Los Lunas and he would come and get Mr. King. He testified that Mr. Ford arrived and picked up Mr. King and took him to the truck, and Mr. Ford asked him to write down what had happened so that Mr. Vaughn would know. He stated that it was approximately thirty minutes from the time the incident occurred until Mr. Ford arrived.

Mr. Garcia testified that when Mr. King first started cutting the tie bundles he observed him at the end of the tie bundle. He stated that he did not see the accident, and the other employees told him they did not see the accident either.

P. A. Vaughn, Roadmaster, testified that he was notified of the accident and went directly to the hospital. He stated that he asked Mr. King if he wanted to have his family bring him to Gallup because he could not ride comfortably in his truck for that distance. He stated that he got in touch with Mr. King's family, and they advised him they would transport him into Gallup.

Mr. Vaughn also stated that Mr. King was not offered any air transportation that he knew of. He stated they corresponded with two different ambulance services, one in Belen and one in Albuquerque, and neither would transport Mr. King.

Roadmaster Vaughn testified that the claimant did not explain to him that he could not read or write English. He stated the claimant told him he would not fill out the Form 1421 until he had a lawyer.

M. J. Cook testified that he was the Safety Supervisor for the Albuquerque Division and the Dalies Section was under his area of responsibility. He stated that his first contact with Mr. King was on July 14 when he and Lorraine Keene, Employment

Supervisor at Gallup, New Mexico, who acted as an interpreter, visited Mr. King. He stated that he went to Mr. King to obtain a 1421 (Report of Injury). He stated that Mr. King indicated on Form 1421 that he was partially responsible for his injury based on his being in the wrong place.

Lorraine Keene testified that she was the Personnel Administrator, headquartered at Gallup, New Mexico, and she interpreted for Mike Cook. She stated she interpreted for Mr. King and then filled out Form 1421 at his request, and he signed the form.

Mr. King returned to testify and stated that he first cut the band from the end and then walked from the end to the side and cut the second band. He stated that it took a while to cut the first band, but the second one took just one whack.

The Board has reviewed all the evidence and finds that such evidence is insufficient for the Carrier to find that claimants Yazzie King, Sr. and J. L. Gaddy violated the rules as charged.

The Board recognizes that claimant King was cutting the band from the end, but the foreman did not give adequate supervision to the job which was being performed. The claimant may have been partially responsible for the accident, but the evidence does not establish that he was aware the bands should not be cut from the side.

Under the circumstances herein the discipline for Foreman T. Garcia will be allowed to stand, but the discipline for J. L. Gaddy and Yazzie King, Sr. will be set aside. The Carrier is directed to remove all mention of the discipline from the records of J. L. Gaddy and Yazzie King, Sr. and to pay them for all time lost. The claim for T. Garcia will be denied.

AWARD: Claim disposed of as per above.

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


Preston J. Moore, Chairman


Union Member

*Dated at Chicago, Illinois
October 6, 1987*


Carrier Member