

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: Carrier's decision to remove former Colorado Division Trackman R. S. Martinez from service, effective July 23, 1987, was unjust. Accordingly, Carrier should be required to reinstate Claimant Martinez to service with his seniority rights unimpaired and compensate him for all wages lost from July 23, 1987.

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 Carrier notified the claimant by letter dated July 24, 1987 to attend a formal investigation on August 13, 1987 to develop the facts and place his responsibility, if any, concerning his possibly reporting for duty on Thursday, July 23, 1987 at Las Vegas and Springs, New Mexico under the influence of alcoholic beverages or intoxicants in possible violation of Rules 1, 2, 6, 16, 31A and 31B, General Rules for the Guidance of Employees, 1978, Form 2626 Standard. Pursuant to the investigation the claimant was found guilty and was removed from service.

Roadmaster Hernandez testified that his territorial responsibilities included the Raton, Santa Fe and Las Vegas Sections. He stated that the claimant was a member of Las Vegas Section 23. He testified on the morning of July 23, 1987 the claimant arrived late at the depot and the Section left him, and he drove to Springs, New Mexico where the crew was scheduled to unload ballast with the work train.

Mr. Hernandez testified there was a possibility the claimant was under the influence, and when the claimant reported to Springs, he asked the claimant to blow his breath in his face. He testified he smelled alcohol.

Foreman D. C. Martinez testified that on the morning of July 23, 1987 the claimant was to report to his Section. He stated that when the claimant reported, he was not drunk or anything, he just smelled like liquor. He testified that he told Track Supervisor Medina that the claimant was not fit for work, and he smelled like liquor.

Track Supervisor Medina testified that the foreman advised him that he could smell liquor on the claimant, and then he talked to the claimant, and he also smelled liquor on him, and he asked

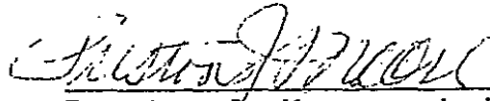
the claimant if he had been out the night before, and the claimant said "Yes." He stated he called for the Roadmaster but could not find him, and he then transported the claimant to Las Vegas.

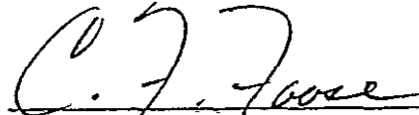
Supervisor Medina further stated that when they arrived in Las Vegas Roadmaster Hernandez asked the claimant to take off his sun glasses and to blow in his face, and the Roadmaster then took the claimant out of service pending an investigation. He testified the claimant was not stumbling and did not have the appearance normally associated with an intoxicated person.

The claimant testified that he had not been drinking that day or the night before. The claimant contends he was at a bar the night before but was not drinking, and the alcohol which the witnesses smelled must have been on his clothes.

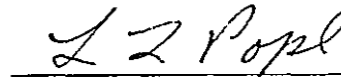
The Board has reviewed the 24 pages of the transcript and all of the exhibits submitted by the parties. The evidence is sufficient for the Carrier to find that the claimant was guilty as charged. The claimant has a poor record. There is no justification for setting the discipline aside.

AWARD: Claim denied.


Preston J. Moore, chairman


Union Member

*Dated at Chicago, Illinois
May 4, 1988*


Carrier Member