

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. Carrier's decision to remove former System Steel Gang Trackman L. D. Johnson from service, effective October 30, 1987, was unjust.
2. Accordingly Carrier should be required to reinstate Claimant Johnson to service with his seniority rights unimpaired and compensate him for all wages lost from October 30, 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 claimant was notified to attend a formal investigation in Fresno, California on November 19, 1987. Claimant was charged with the possible violation of Rules 1, 2 and 6 of Form 2626 Standard, General Rules for the Guidance of Employees, 1978 Edition, at Oakley, California on October 30, 1987.

The investigation was postponed until December 8, 1987. Pursuant to the investigation the claimant was found guilty of violating the rules with which he was charged and was removed from the service of the Carrier.

The representative of the BMW, C. E. Gilliam, requested a postponement on behalf of the claimant and another employee, Mr. Denny. The motion was denied. The claimant did not appear at the investigation. Mr. Gilliam testified that Mr. Kee had requested that he be present but that he had not spoken to the claimant herein.

Representative Gilliam testified that he understood the BMW in Newton, Kansas had been contacted with a request that a representative be present. He stated that Charles Gilliam, Vice-President of the BMW Santa Fe System, requested that he be present and represent the claimant herein, as well as two other claimants charged in the same investigation.

Joe Raymond Mejia, Assistant Roadmaster for the Albuquerque Division, testified that Foreman Garza called him at approximately 7:15 a.m. on October 30, 1987 and advised him that he had a man intoxicated on Company property.

Roadmaster Mejia stated that when he arrived at Oakley the claimant was pointed out to him, and he got the claimant to sit down in his truck, and he asked him his name and Social Security Number. He stated the claimant gave him this information and when asked if he had been drinking, he stated "Yes, he had a couple of beers last night." Mr. Mejia further testified it was apparent the claimant was under the influence of alcohol.

Roadmaster Mejia then testified that he advised the claimant he was out of service because he was unfit to work, and the claimant asked: "What shall I do?" He stated the claimant was instructed to get his things and get off the property, and the claimant said O.K.

Mr. Mejia then testified that after the claimant got out of the truck at the outfit car, he again asked what he should do and stated that he needed some money. Mr. Mejia testified that he told the claimant he would see what he could do.

Roadmaster Mejia testified that the claimant was rocking back and forth while he was sitting in the truck, and there was the odor of alcohol on his breath. He said the claimant's speech was slurred, and he walked in a way which appeared he was trying to watch his footing.

Assistant Foreman Larry Belinti testified that he made an investigation and talked to Jerry Kee. His testimony indicates that Jerry Kee, Calvin Denny and the claimant herein were out the night before until 1:00 or 2:00 o'clock in the morning. He testified the three employees were making a lot of noise at the bunk car until 2:00 a.m. He testified he would not allow Jerry Kee to work the next morning.

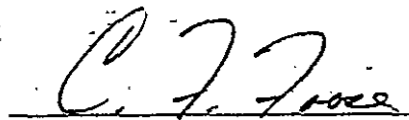
Jerry Kee testified that the claimant was at a bar the evening before, and they left about 10:30 p.m.

Under the circumstances herein and the evidence presented, the Board has no justification to set the discipline aside.

AWARD: Claim denied.


Preston J. Moore, Chairman

*Dated at Chicago, Illinois
July 6, 1988*


Union Member


Carrier Member