

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. Carrier's decision to remove former Plains Division Trackman T. N. Davis from service, effective July 16, 1987, was unjust.

Accordingly, Carrier should be required to reinstate Claimant to service with his seniority rights unimpaired and compensate him for all wages lost from July 16, 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 Amarillo, Texas on July 24, 1987 concerning his allegedly being on Company property in the parking lot at the Lubbock RFO with alcoholic beverages in his possession and giving false and misleading information in connection with this possible rule violation on July 15, 1987 at approximately 4:40 p.m., and to determine the facts and place the responsibility, if any, involving possible violation of Rules 6, 14 and 16 of the General Rules for the Guidance of Employees, 1978. Pursuant to the investigation the claimant was dismissed from the service of the Carrier.

J. H. Baker, Manager of RFO at Lubbock, Texas testified that he was at the RFO at Lubbock, Texas on the afternoon of July 15, 1987 when Assistant Trainmaster J. B. Edwards asked him to look outside and when he did so, he observed Trackman Isom standing by an older model white car with a can of Coors beer in his hand. This witness stated that he went out to the parking lot and confronted Mr. Isom.

Manager Baker testified that the passenger door of the automobile was open, and he recognized Trackman Steve Sumner sitting on the passenger side of the automobile with a can of beer between his legs.

Mr. Baker further testified that he told Mr. Isom he was in violation of the rules at that time and should not be on Company property with alcoholic beverages. He testified that Mr. Isom told him he had come by to get his check.

Mr. Baker testified that at this time he observed that also in the automobile was a white male behind the wheel and a Spanish American on the driver's side of the back seat, but he did not recognize either of those gentlemen. He testified that he questioned Mr. Isom as to the identity of those gentlemen and was advised they did not work for the Santa Fe.

Manager Baker also testified that before he left the scene he had asked both of the other people in the automobile, the one behind the wheel, and the one behind the driver's side in the back seat, if they worked for the Santa Fe, and they told him they did not. At the investigation Mr. Baker identified the man behind the wheel as the claimant and again stated that he had asked him twice if he worked for the Santa Fe, and he had replied in the negative both times.

The claimant testified that he was in the parking lot of the RFO in Lubbock on July 15, 1987. He stated that he did not have any alcoholic beverages in his possession and didn't see any there until Rudy handed that one out the window. He stated that was the first time he even realized it was in the car.

He testified that he misunderstood Mr. Baker when he asked where he was working. He stated he thought he was asking if he worked at Plainview with Robert because he had just gotten through talking to Robert.

The Union entered an affidavit by Rudy Garza which stated that the beer Robert Isom had belonged to him, and it was given to Mr. Isom by him.

Manager Baker was recalled, and he testified that he did first ask the claimant where he worked, but then stated that he asked him specifically if he was an employee of the Santa Fe, and the claimant's response was that he was not.

The Board has carefully studied the evidence of record. Under the circumstances herein permanent dismissal is harsh, arbitrary and unjust. The Carrier is directed to reinstate the claimant with seniority and all other rights unimpaired but without pay for 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
Preston J. Moore, Chairman

C. F. Fover
Union Member

Dated at Chicago, Illinois
September 15, 1988

L. Z. Pope
Carrier Member