

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 remove Panhandle R. M. Coleman from service was unjust.
2. That the Carrier now reinstate Claimant Coleman with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 9:30 a.m., April 14, 1994 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved that the claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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 Amarillo, Texas on April 14, 1994. The claimant was charged with being indifferent to duty, quarrelsome, insubordinate and careless about the safety of himself and others when he initiated an altercation with Roadmaster L. D. Garthrop, and to determine the facts and place responsibility, if any, involving possible violation of Rules A, B, 1007 and 1008, Safety and General Rules for All Employees, 1989.

Pursuant to the investigation the claimant was found guilty of violating Rules A, B, 1007 and 1008 and was dismissed from the employment of the Carrier.

Administrative Specialist J. Cornejo testified that a notice of the investigation was mailed to the claimant by certified mail to the last official address of the claimant on record with the Carrier. This witness also testified the envelop came back undelivered, showing an attempt was made to deliver on April 5, and the letter was not picked up.

Roadmaster L. D. Gawthrop testified that the claimant was under his supervision on March 24, 1994. He testified that on that

morning he was standing in the lobby, along with the rest of the personnel who worked with him, and the claimant approached him and said "Larry, you're a prick" and started hitting him. He then testified the claimant started hitting him, and that he grabbed hold of the claimant to hold him back, but the claimant kept hitting him, and he was dodging the punches.

The Roadmaster then testified he took the claimant back and tried to talk to him, loosen him up a little bit, but the claimant hit him and got his glasses which resulted in a cut under his eye, and then the claimant hit him in the ear, and then he straightened up his grip on the claimant and started toward the door and asked a couple of guys to please take the claimant outside.

This witness testified this occurred between 7:10 and 7:15 a.m., and the claimant was scheduled to report for duty at 7:00 a.m. He stated he did not know what provoked the altercation. He also testified the claimant stated he wasn't finished with him and was coming back to finish him.

Scott Felker, a trackman on the Pampa Section, testified that he observed the claimant approach Roadmaster Gawthrop that morning and start calling him names and took a swing at him, striking him on his glasses, locking the lens out of the glasses into his cheek. He stated that when Mr. Gawthrop asked for assistance, he and Mr. Hamilton subdued the claimant.

The Board has examined the evidence and the rules under which the claimant was charged and finds there is no basis to overrule the decision of the Carrier.

AWARD: Claim denied.

*Dated July 11, 1944
at Schaumburg, Illinois*

Preston J. Moore
Preston J. Moore, Chairman

C. J. Jones
Union Member

L. Z. Pope
Carrier Member