

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: That the Carrier violated the Agreement when on May 24, 1976, they dismissed Trackman L. D. Begay, said dismissal being unreasonable, arbitrary, discriminatory and therefore excessive. That the Carrier now reinstate Trackman L. D. Begay to his former position with seniority, vacation and all other rights unimpaired and compensate him for loss of earnings beginning May 24, 1976 until reinstated.

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 assigned to an Ash Fork Section Gang in Ashfork, Arizona. The gang was assigned to remove guard rails. The section foreman noticed that the claimant was not working with the other men and observed him walking down the road wobbling from side to side.

The section foreman testified that he approached the claimant and asked him if he had been drinking, and the claimant retorted, "last night." The section foreman told the claimant that he would have to take him to the assistant roadmaster, and the claimant took his lunch pail out of the truck and turned and walked away from the section site. A formal investigation was held and the claimant was found guilty of violation of Rule 6 which concerns the use of alcoholic beverages.

The claimant was notified that his case was going to be heard before this Public Law Board and was advised that he was privileged to appear in person or by a representative of his choice if he so desired. The claimant did not appear, and the Union represented him in this case.

The claimant admitted at the investigation that he walked off the job and that he knew he was not supposed to report for work in an intoxicated condition and that he drank a half pint of whiskey and believed he was still a little intoxicated when he reported to work. Under those circumstances there can be little doubt but that the claimant was guilty as charged.

The Organization contends that an interpreter was involved and that these were not the answers the claimant gave. There is no evidence furnished that these were not the answers given by the claimant.

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Therefore, the testimony must be accepted. Many men will testify to the truth, regardless if it may be damaging, and such is generally much more to their benefit than to their detriment. For example, if the claimant herein did not have such a poor record, he would be reinstated principally because of his truthfulness. However, under the circumstances the Board is not justified to overrule the decision of the Carrier.

AWARD: Claim denied.

sd/ Preston J. Moore
Preston J. Moore, Chairman

sd/ S. E. Fleming
Organization Member

sd/ B. J. East
Carrier Member