

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: Claim in behalf of former Trackman J. M. Montantes, Valley Division, for reinstatement to his former position with seniority, vacation and all other rights unimpaired and compensation for wage loss beginning March 2, 1977.

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 charged with having an altercation with another employee. Pursuant to the investigation the claimant was found guilty by the Carrier and was dismissed from the service.

The Organization contends that the claimant did not receive a fair and impartial investigation and that the superintendent failed to render his decision promptly. The Organization also contends that discipline was not applied equally since the other employee involved in the altercation was not disciplined.

The testimony and evidence reveals that the claimant arose early in the morning and turned on the lights in the outfit car at approximately 5:40 a.m. when some of his fellow employees were sleeping. Words between the claimant and another employee resulted in the claimant pulling a knife and attacking his fellow employee. When the fellow employee took the knife away from the claimant, the claimant then picked up a frying pan and attempted to hit the other employee with it. The claimant was not successful in that regard as the other employee took the frying pan away from him.

The Carrier examined the claimant's record of service and found it to be very poor. The claimant had previously been dismissed from service for a violation of the Carrier's rules and had subsequently been reinstated on a leniency basis.

The Organization had requested that the witnesses be segregated, but the witnesses were allowed to have lunch together during the investigation, and after they had testified they were allowed to remain in the hearing room. The officer in charge of the hearing should notify the witnesses that they are not to discuss their testimony with any other witness until the hearing has been completed.

However, there is no error in allowing a witness to return to the witness room or to allow the witnesses to have lunch together. After

a witness has testified he may be excused, and unless one party states they may wish to recall him as a witness, he may remain in the hearing room. In the event either party states they may wish to call a witness again, the witness should not be excused but should be returned to the witness room and held subject to being called. However, herein there is no evidence there was any desire to recall the witness who was allowed to remain in the hearing room. Therefore the Board finds there is no procedural error.


The evidence is persuasive that the claimant herein was the aggressor in the altercation, and therefore, there was no justification for the Carrier to discipline the other employee.


The Organization contended that the claimant did not have a rule book. It is noted that the claimant admitted he had a copy of the rule books although they were not current. The rules had not been changed and were still in effect on the property, and the evidence is persuasive that the claimant was aware of the rules.

The Board has examined all of the Organization's allegations that the claimant was not afforded a fair and impartial investigation and finds no support for such allegations. The Board fails to find just cause to overrule the decision of the Carrier.

AWARD: Claim denied.

  
Preston J. Moore, Chairman

  
Organization Member

  
Carrier Member

Dated November 27, 1978