

AWARD NO. 84  
CASE NO. 98

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: Claim in behalf of former B&B Painter R. C. Marquez, Albuquerque Division, for reinstatement "with seniority, vacation and all other rights unimpaired and compensation for all wage loss beginning June 29, 1976 continuing forward until he is restored to service.

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 his failure to be courteous, orderly and obey instructions; with being quarrelsome and indifferent to duty on June 21, 1976; and with failure to report for duty on June 23, 1976. Pursuant to the investigation the claimant was discharged, and the Organization has filed this claim.

The Organization contends that the claimant was unjustly suspended from service pending the investigation and that the investigation was not fair and impartial. The Organization points to certain remarks which the claimant made when he was given notice of the investigation and contends those remarks should have been stricken from the record of the investigation since they might be prejudicial.

The Organization also relies upon a statement by the Division Engineer in his opening statement wherein he requested the claimant to refrain from outbursts of temper. The Organization contends that this statement indicates prejudgment. Of course, the prejudgment of having a temper is not prejudgment of guilt of the charges.

The entire transcript has been examined, and the evidence and testimony have been carefully studied. The claimant admits that he was partially guilty of the charges.

The Board has carefully considered all of the evidence and the fact that other employees may have been harassing the claimant herein. However, the course of action which the claimant chose to pursue was not one which is conducive to good relations. The claimant had only been an employee for

approximately 21 months and had a poor record. Under the circumstances the Board finds there is no justification to overrule the decision of the Carrier.

AWARD: Claim denied.

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Preston J. Moore, Chairman

*A. E. Flanning*  
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Organization Member

*B. J. East*  
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Carrier Member

November 27, 1978