

PUBLIC LAW BOARD NO. 2774

Award No. 178

Case No. 178

PARTIES  
TO  
DISPUTE: Brotherhood of Maintenance of Way Employes  
and  
Atchison Topeka & Santa Fe Railway Company

STATEMENT  
OF CLAIM: "1. That the Carrier's decision to remove  
Southern Division Trackman J. G.  
Alexander from service was harsh and  
unjust.  
2. That the Claimant shall be returned to  
service with vacation, seniority and  
all other rights unimpaired and that he  
will be made whole for all time lost."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant was dismissed from service on January 20, 1987, following an investigation. He had been charged with violation of certain Carrier rules due to his having pled guilty to aggravated assault charges and being sentenced to six years unadjudicated probation by a district court in Bell County, Texas. The record

indicates that Claimant on November 2, 1986 had been arrested for cutting and stabbing another individual and also for possession of methamphetamines. The record indicates that the drug charge was dropped upon Claimant pleading guilty to the assault charges. A newspaper article with respect to this matter indicated that he pled guilty to the assault charges stemming from a November 2 fight in which another individual was cut with a knife on the shoulders and neck. The record also specifies that the Claimant had been disciplined by Carrier on 14 prior occasions, including one prior dismissal. In that dismissal he was reinstated on a leniency basis in 1983. At the time of the instant dismissal Claimant had 50 demerits outstanding on his record.

Carrier maintains that at the time of this particular incident, Claimant would have been dismissed had he received merely 10 demerits for the offense, in view of his past record. However, that was more lenient than was appropriate in the circumstances of this particular matter. According to Carrier, Claimant was found to have violated Carrier's rules after a fair investigation and was appropriately disciplined.

Petitioner insists that Carrier's actions in this case were unduly harsh, capricious and in abuse of discretion. The Organization maintains that there was no evidence whatever to indicate that Carrier was discredited in any fashion by Claimant's actions. Nor was there any evidence disputing

Claimant's testimony that he was being attacked by the other individual at the time of the fight.

It is this Board's view that not only was Claimant's conduct one which could subject Carrier to criticism but, more significantly, was one in which his conduct was certainly unbecoming to an employee particularly in this industry. Even more significantly, the Carrier is not under an obligation to retain as an employee anyone who it has reason to believe may be dangerous to other employees. In this instance, Carrier's decision was amply supported by the evidence and its decision to dismiss Claimant may not be disturbed.

AWARD

Claim denied.



I. M. Lieberman. Neutral-Chairman



C. F. Foose. Employee Member



G. M. Garmon. Carrier Member

Chicago, Illinois  
October 11, 1988