

PUBLIC LAW BOARD NO. 2774

PARTIES Brotherhood of Maintenance of Way Employees
TO
DISPUTE: and

The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIMS:

1. That the Carrier's decision to remove Arizona Division Trackman A. Long from service, effective October 1, 1988, was unjust.
2. Accordingly Carrier should be required to reinstate Claimant Long to service with his seniority rights unimpaired and compensate him for all wages lost from October 4, 1988.

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.

The record shows that Mr. Long, a Navaho Indian, understands very little English. In fact the investigation, which was part of this matter, had to be translated totally from the standpoint of his both understanding the questions and his answers. The record is ambiguous with respect to when Mr. Long entered Carrier service. His testimony indicated that he had worked for the Carrier for some 27 or 28 years. Carrier's records specify that he was employed as a trackman on July 25, 1977. The organization says that Claimant had a seniority date of May 18, 1970. There apparently was a break in service some time during the 70's and there was a re-employment of Mr. Long in 1977.

The critical incident, which is involved in this matter, took place on September 6, 1988, while Claimant was working as a truck driver on an extra gang in Arizona. On that day he was instructed with a fellow employee to go to a particular location in their own automobiles for the purpose of getting a gang truck from that location. In addition, Claimant was instructed to pick up a fuel tank trailer and load the tank with diesel fuel and return to Peach Springs, his headquarters point. On the day in question, at approximately 2:00 P.M., they filled the diesel fuel trailer with diesel and Claimant began the trip with his fellow employee following in his own car. At approximately 4:15 P.M. that day, while in transit, the fuel trailer began swerving back and forth causing it to come free from the truck and tip over dumping out the fuel. As a result of the accident, Claimant was placed under arrest for allegedly driving while under the influence of alcohol. Upon arriving at the county jail in Prescott, Arizona he underwent an alcohol test, which indicated a .22% alcohol content in his blood. As a result of the accident, Claimant was incarcerated for 24 hours and in addition, the trailer was a total loss with a replacement cost of approximately \$6,400.00. It is also noted that under Arizona law, blood alcohol concentration of .05%, constitutes driving while under the influence. In this instance, Claimant's blood concentration of .22% was well beyond the intoxication level.

Claimant was removed from service and cited for investigation for violation of Company Rule G and a number of other rules. He was accorded an investigation, which was held on October 4, 1988, and following the investigation he was found guilty of all the charges and dismissed from Carrier service.

From an analysis of the record of the investigation of this matter, it is clear that Claimant was guilty of the charges, and from that standpoint Carrier was correct

in its conclusions. The only question in this matter is whether indeed dismissal was the appropriate remedy in view of all the circumstances. While this Board hesitates to tamper with any discipline accorded by Carrier, when the evidence clearly supports the fact that there was a rule violation as is true in this instance, there is a mitigating circumstance. In this case Claimant had a clear record from the standpoint of prior discipline, and apparently either 17 or 27 years of service with no record of prior discipline of any kind. It is this Board's belief that a discharge was harsh and unnecessary under all the circumstances. Accordingly, Claimant will be reinstated to his former position, but with no pay for time lost in view of his culpability and obvious intoxication at the time. His reinstatement shall be conditioned upon his securing a clearance from the company's Employee Assistance Program counselor prior to reinstatement.

AWARD

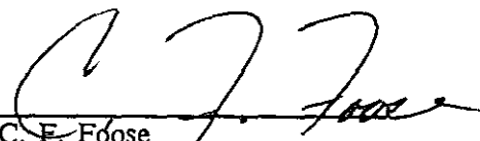
Claim sustained in part as indicated in Findings above.

ORDER

Carrier will comply with the Award herein within 30 days from the date hereof.


F. M. Lieberman, Neutral-Chairman


L. L. Pope
Carrier Member


C. F. Foose
Employee Member

Chicago, Illinois
June 26, 1991