

PUBLIC LAW BOARD NO. 4823

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

STATEMENT OF CLAIM:

Claim on behalf of Trackman-Driver M. L. Lucero, Kansas Division, seniority date August 11, 1976, for reinstatement with seniority, vacation, all rights unimpaired and pay for all wage loss commencing October 24, 1988, continuing forward and/or otherwise made whole.

FINDINGS:

This Public Law Board No. 4823 finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

On October 19, 1988, the claimant was cited for violation of "Rule 'G'", at approximately 2:35 P.M. at Section House, Pueblo Yard on October 18, 1988" and was notified of formal investigation set for 10:30 AM, October 24, 1988, concerning his possible violation of Rules "A", "B", "G" and "1007", Safety and General Rules for All Employees. The claimant was found responsible for violation of the rules cited and was removed from service immediately following the formal investigation.

The Employees contend the decision to remove the claimant from service was "extreme, unwarranted and unjustified and is not supported by the flagrant abuse of any of the Carrier's rules. Even if the Carrier could produce evidence to support their charges, the discipline issued is excessive in proportion to the Carrier's allegations, even if the Carrier had sustained their alleged charges (which they did not)." The Employees further contend that the Carrier failed to comply with "Rule 13 and Appendix No. 11 of Agreement between the parties dated January 1, 1984 as amended."

Notwithstanding the Employees' contentions to the contrary, the transcript of the formal investigation

contains sufficient unrefuted testimony (including but not limited to the claimant's own admissions) to establish his responsibility for leaving his assignment between on October 18, 1988, between 12:30 and 1:00 PM "to conduct personal business", whereupon he went home, consumed a six-pack of beer before returning to the Pueblo Section House (company property), at approximately 2:35 PM. Soon thereafter he was questioned by Special Agent McCoy and Roadmaster Trimble. During said questioning he freely admitted to having consumed a six-pack of beer in forty-five minutes, immediately prior to returning to the company property. These actions clearly violated Rule "G", one of the rules cited in the notice of formal investigation. Claimant Lucero was removed from service as a result thereof.

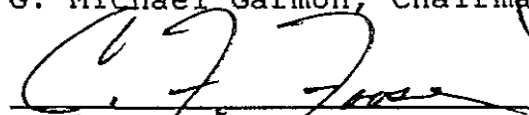
Since the claimant admitted to having returned to the Carrier's property immediately after consuming a six-pack of beer (in just forty-five minutes), he certainly was in violation of Rule "G". The only question to be resolved by the Board is whether permanent dismissal was an appropriate measure of discipline for the claimant's admitted responsibility.

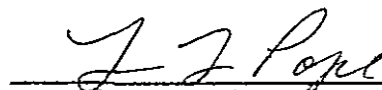
In evaluating the measure of discipline assessed in this instance, the Board notes that the claimant's service and discipline records reflect several lengthy leaves of absence and numerous (19) occasions when he was assessed demerits for being absent from duty without authority.

The Board finds no basis for the Employees' contentions in this case. The claimant's removal from service was an appropriate measure of discipline, considering the evidence of record.

AWARD: Claim denied.


G. Michael Garmon, Chairman


Employee Member


Carrier Member

Dated at Chicago, IL:

February 5, 1990