PUBLIC LAW BOARD NO. 4901

AWARD NO. 63
CASE NO. 63

PARTIES TO
THE DISPUTE: United Transportation Union (CT&Y)

vs.

Atchison, Topeka and Santa Fe Railway
(Coast Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained.

DATE: April 8, 1996

STATEMENT OF CLAIM:

> Request in behalf of Phoenix Brakeman B. L. St. Germain for reinstatement to the service of The Atchison, Topeka and Santa Fe Railway Company, Coast Lines, with seniority and all other rights unimpaired and with pay for all time lost beginning on December 9, 1993, and continuing until returned to service.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

On September 12, 1992, Claimant and another employee were involved in an altercation in Winslow, Arizona. There was a history of bad blood between them. In very brief summary, Claimant said the other employee suddenly appeared in front of his slow-moving pickup truck and threw rocks at it breaking the windshield and driver's side window. The other employee said Claimant attempted to run him down with his truck. Although he admitted throwing the rocks that broke Claimant's windows, the other employee maintained he was only defending himself. The police were called to investigate. An independant witness corroborated the other employee's version of the altercation. Nonetheless, both men

were cited. Claimant was charged with endangerment and the other employee was charged with damage to property.

It is undisputed that Claimant reported the altercation to appropriate Carrier officials on the same day it occurred.

Apparently Claimant agreed that the charge against the other employee could be dismissed before trial ostensibly so Claimant could get on with his life. Claimant's charge was not similarly dismissed. He went to trial, without a jury, the following year. The trial resulted in a conviction on September 23, 1993. The conviction was appealed. Apparently the trial court failed to properly record the trial - it was discovered that the tapes were blank. As a result, the conviction was vacated and a new trial was ordered. Thereafter, Claimant's case was routed through a court diversion program. He was never re-tried and the charge against him was ultimately dismissed. For the record, therefore, Claimant was never officially convicted of the charge.

On October 22, 1993, more than one year after the altercation and Carrier's knowledge of it, Carrier notified Claimant to attend an investigation to determine the facts and place responsibility for attempting to cause physical harm to the other employee.

Following the investigation, actually held November 19, 1993 after several Organization requests for postponement, Claimant was terminated on December 9, 1993.

The Organization contended the discharge was improper on the ground that Claimant was not afforded a fair and impartial hearing as required by Article 13(a), (b) and (e) of the applicable Schedule Rules. As a threshold matter, however, the Organization objected that Carrier did not conduct the investigatory hearing within the 30-day time limit required by Article 13(a).

Carrier argued the investigation hearing was scheduled within 30-days after its first knowledge of the findings from the court proceedings. It also denied the other Organization contentions.

Article 13(a) reads in pertinent part as follows:

> No train service employe shall be suspended or dismissed from the service of the Company without first having had a fair and impartial hearing and his guilt established, * * *
>
> Investigations will be held promptly but in any event not later than 30 days from the date the Company has knowledge of occurrence of the incident to be investigated, * * *

It is clear that the incident the Company investigated was the altercation of September 12, 1992, which occurred more than a year earlier. The Carrier recognized this in its submission. Indeed, Carrier's hearing officer refused to take the testimony of witnesses that did not have first-hand knowledge of the altercation. It is also clear that Carrier's first knowledge of the altercation did not come with Claimant's conviction in 1993. It came the same day as the altercation when Claimant reported it.

The clear and unambiguous language of Article 13(a) requires this Board to find that Claimant was discharged contrary to the parties' Agreement. The Claim must, therefore, be sustained.

AWARD:

The Claim is sustained.

Gerald E. Wallin, Chairman
and Neutral Member

P. L. Patsouras,
Organization Member

David S. Hubbs,
Carrier Member
d dissent

Dated this 8th day of April, 1996 in St. Paul, Minnesota.