

## PUBLIC LAW BOARD NO. 1368

PARTIES) THE COLORADO AND WYOMING RAILWAY COMPANY  
 TO )  
 DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Claim of M. Johnson for pro rata rate of pay for period July 1, 1974 through December 31, 1974.

FINDINGS: This Public Law Board No. 1368 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 dismissed from the service of the Carrier for being insubordinate in that he refused to protest his assignment for the remainder of the work day on May 31, 1974.

The facts of record indicate that at 7:00 a.m. on May 31 claimant reported for work, and at the start of his assignment advised the assistant general track foreman that because of personal business he would be unable to perform overtime work following the regular assignment on that date.

This information was transmitted to the general track foreman but later in the day the decision was made that overtime had to be worked. When the claimant was notified of this decision, he stated that he could work either the afternoon of May 31 or the following day, Saturday, June 1, but he must be off one of those days.

At about 2:30 p.m. the claimant again advised the general track foreman of the necessity of his being off that afternoon or the day following, but his request was refused. The claimant thereupon attempted to see the general superintendent.

His seeing or not seeing the general superintendent would have no bearing upon this matter, because the orders of the assistant general track foreman and the general track foreman are all that is involved.

The claimant walked off the job at 3:00 p.m. and did not perform the overtime. Upon reporting for work Monday, June 3 the claimant was advised that his failure to work the overtime was tantamount to resignation and that he would not be permitted to perform work.

The claimant was reinstated to his position June 19, pending an investigation, and was notified that there would be an investigation on Friday, June 21. After the investigation the Carrier determined that the claimant was guilty and suspended him for six months for his failure to complete the overtime on May 31.

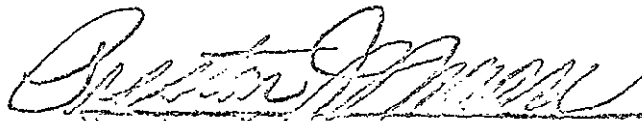
At the outset, the Agreement between the parties does not provide for suspension pending an investigation, and the claim for June 3 to June 19, 1974 is valid.

The Board has examined all of the evidence of record, and under the circumstances it appears to the Board that any discipline assessed in excess of 90 days is harsh, arbitrary and unjust. 90 days is the maximum amount of time which could be justified for the action taken herein and all of the circumstances surrounding this incident.


Therefore the claim will be sustained from June 3 to June 19, 1974 and for the months from October 1 to December 31, 1974.

AWARD: Claim sustained as per above.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.

  
Preston J. Moore

  
Organization Member

  
Carrier Member  
J. E. Curran

Arcade, Texas  
July 13, 1975