

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: Claim in behalf of former Middle Division Trackman D. J. Heck, as follows:

(1) That the Carrier violated the Agreement between the parties, particularly, but not limited to, Article V thereof when they dismissed claimant from service as a result of investigation held on July 27, 1978, said dismissal being arbitrary and abusive.

(2) That the Carrier now reinstate claimant to service with seniority, vacation and all other rights unimpaired and with pay for all wage loss that resulted from his dismissal of July 27, 1978.

FINDINGS: This Public Law Board No. 1582 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 allegedly absent from duty without proper authority commencing May 6, 1978. On June 9, 1978 the Carrier mailed the claimant a notice advising that his seniority and employment was terminated in accordance with Article 5 of the current agreement. On June 28, 1978 the claimant requested a formal investigation which was held on July 19, 1978. Pursuant to the investigation the claimant was found guilty of being absent from duty without proper authority and was terminated as a result thereof.

The Organization filed a claim for reinstatement of the claimant to service with seniority, vacation and all other rights unimpaired and with pay for all wage loss which resulted from his termination on July 27, 1978.

The record herein indicates that the last day the claimant worked was May 5, 1978. The extra gang foreman testified that he did not give the claimant permission to be absent from duty since May 5. However the claimant had filed Form 1516 Standard, which is a request for a leave of absence. The request for a leave of absence was to commence May 8, 1978 and last through June 8, 1978. The leave of absence was not granted.

However, evidence indicates there have been several instances in the past when a leave of absence has been filed, and the employee has taken the leave of absence before it was authorized by the Carrier.

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Under ordinary circumstances the employee would be required to have an approved leave of absence before taking off. However, since several times in the past the Carrier has allowed employees to take off after filing a request for a leave of absence, the employee may be partially justified in assuming that the leave of absence would be granted. Therefore it appears to the Board there were some responsibilities which the claimant failed to live up to and some responsibilities which the Carrier failed to live up to.

The claimant has a very poor record. He had been disciplined on three other occasions for being absent without authority. He had been discharged on June 16, 1977 for being absent without authority. The claimant only had nineteen months of service with the Carrier, but in view of the Carrier failing to establish a definitive policy in regard to leaves of absence, the Board finds that the claimant should be reinstated with seniority and all other rights unimpaired but without pay for time lost.

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, Chairman


Organization Member


Carrier Member