

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 Los Angeles Division Trackman Fred Elliott as follows:

(1) That the Carrier violated parties agreement, particularly but not limited to, Article XII by unjustly removing Mr. Elliott from service May 5, 1978 as a result of formal investigation held on April 21, 1978.

(2) That the Carrier now reinstate Mr. Elliott to service with seniority, vacation and all other rights unimpaired and with compensation for wage loss beginning May 6, 1978 continuing forward until restored to service.

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 employed on the Los Angeles Division September 1, 1977. The claimant had been granted a leave of absence because of injuries received in an automobile accident.

The claimant reported to the Division Engineer's office at San Bernardino, California on March 13, 1978 and requested an extension to his leave of absence which was to expire on March 14, 1978.

The claimant contends that when he talked with the clerk in the Division Engineer's office on March 13 that he was asked the reason for his requested extension, and he advised the clerk he was having transportation and family problems. The claimant contends that the clerk then advised him he would in all likelihood be denied an extension on that basis.

The claimant also stated that the clerk advised him that he had best submit the request for an extension to the leave of absence on the basis previously granted -- in other words, off duty because of injury in an automobile accident.

Prior to going to the Division Engineer's office the claimant had addressed a letter to the Carrier stating that he desired an extension to his leave because of family and transportation problems.

The Organization contends that the claimant did not realize he would probably have been granted an extension merely by presenting the restricted release from his doctor.

On March 14, 1978 the Carrier mailed a certified letter to the claimant advising him that an investigation would be held on April 21, 1978 concerning his application for leave of absence under alleged false pretenses.

By certified letter dated May 5, 1978 the claimant was discharged. On June 15, 1978 the Organization filed a claim in behalf of the claimant alleging that the discipline assessed was severe, harsh and excessive. On April 19, 1979 the Carrier and the Organization agreed to a suspension of time limits until the claim could be discussed in conference. The claim was discussed on May 8, 1979 and was ultimately appealed to this Board.

The Organization points up that the claimant was temporarily disabled and was unable to perform the strenuous duties of a trackman but found himself in a position of having to support his family and therefore applied for work as a trainee in the Postal Department.

The Organization contends that the claimant did not attempt to hide the fact that he was employed by the Postal Department. The Organization alleges that the Carrier failed to recognize that the claimant was under the care of a doctor at the time of the alleged incident.

The Organization charges that the Carrier failed to call the office clerk as a witness at the investigation. The office clerk was the Carrier's employee who had discussed the matter of an extension for leave of absence with the claimant. The Organization also charges that the Carrier failed to acknowledge the claimant's disability status at the time of the investigation.

The Organization contends that the claimant did not willfully or knowingly violate any Carrier rules and was attempting to discharge his responsibilities to himself and to his family.

The Carrier contends that on March 14, 1978 the claimant wrote a letter requesting an extension to his leave of absence on the basis that he was going through a divorce and needed time to take care of legalities.

The Carrier charges that thereafter the claimant contacted the Division Engineer's office and requested that the reason for the extension of the leave of absence be changed to "off duty injury," alleging he was injured in an off duty automobile accident.

The claimant's extension to his leave of absence was approved, and thereafter the Division Engineer's office received a telephone call indicating the claimant was working for the Post Office Department.

The Board has carefully examined the transcript and evidence of record. The testimony indicates that the claimant wanted to extend his leave of absence, and by his own admission, gave one reason for such an extension, and when advised that such would not be authorized, changed the reason for the extension to that of a previous injury.

Surely the claimant knew that if his doctor had not released him to return to work for the Carrier that there could be no charge against him. All he had to do was simply obtain a statement from his doctor. If the claimant was in a dilemma from not receiving any benefits and needing to do some limited work to support his family, all he had to do was see the Carrier and furnish them with a doctor's statement and request permission to perform light duties while on sick leave.

Under the circumstances the Board is of the opinion that the Carrier should have called the office clerk, but this is held to be a harmless error for the reason that the Board accepts the testimony of the claimant in this regard as being true concerning the statements of the office clerk.

Even so, the claimant was still applying for an extension to his leave on a false basis. The claimant had a short tenure of service, having been employed on September 1, 1977, and there are no extenuating circumstances which would justify overruling the decision of the Carrier.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member