

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: That the Carrier violated the Agreement when, effective November 10, 1978, they dismissed B&B Mechanic J. C. Bennett without benefit of a fair and impartial investigation as contemplated by Article V of the Parties Agreement.

(2) That the Carrier shall now reinstate Claimant J. C. Bennett with seniority, vacation and all other rights unimpaired and compensate him for gross wage loss, commencing November 10, 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 had been employed by the Carrier since January 11, 1971. On October 13, 1978 the claimant was notified to attend a formal investigation on October 20, 1978 to determine the facts and place the responsibility, if any, involving possible violation of Rules C and 752(A) of Rules for Maintenance of Way and Structures, and Rules 2 and 15 of the General Rules for the Guidance of Employees.

Pursuant to a request, the investigation was postponed and was rescheduled for October 24, 1978. Following the investigation, the claimant was discharged. The Organization filed a claim for reinstatement and for all wage loss. The Organization had objected to the discharge on the basis that it was not promptly made.

Evidence reveals that the absence occurred on October 5, 1978, and the claimant was notified October 13, 1978 that a hearing was going to be held on October 20, 1978. Thus, the Carrier complied with the time limits of the Agreement.

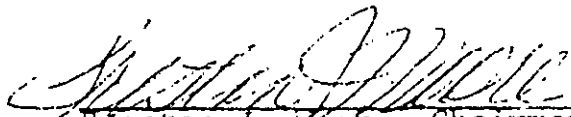
The hearing officer advised that the Carrier would review claimant's past year's work record, and the claimant's representative objected. It is proper that an employee's past work record be considered in order to determine the measure of discipline to be assessed, if any, for a proven violation of Company Rules.


The evidence of record reveals that the claimant was absent October 5, 1978 and that he had not contacted the clerks' office or the foreman. Evidence does indicate that on October 5, 1978 claimant's wife called at approximately 2:30 p.m., but by that time claimant had been marked AWOL.

The work record referred to by the Carrier is actually the attendance record of the claimant. The Organization objected to the attendance record being introduced at the investigation. However the claimant's attendance record was a necessary prerequisite for determining the degree of discipline to be assessed herein.

The Board has examined the attendance record of the claimant and finds this record is extremely poor. Under the circumstances in this case, there is no evidence to overrule the decision of the Carrier.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member