

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the dismissal of Plains Division trackman Jesse Villa was unjust because it was not supported by substantial evidence and even if substantial evidence was provided on record that proved the claimant guilty of rule(s) violation, permanent dismissal from service is excessive and harsh discipline.

2. That Claimant Villa be reinstated to service with seniority, vacation, all rights unimpaired and pay for all wage loss beginning September 3, 1981 continuing forward and/or otherwise made whole.

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 injured on the job on August 11, 1981. The claimant was given a release to return to work on August 21, 1981 but failed to report for work until August 31, 1981. The Carrier charged the claimant with failing to report for duty from August 20, 1981 to August 31, 1981, in excess of ten days without leave of absence or having proper authority.

The roadmaster who had jurisdiction over the district where the claimant worked talked with the claimant on August 20, 1981, and the claimant advised him he would return to work on August 21, 1981. The roadmaster also testified that he offered to make arrangements for transportation of the claimant, but the claimant said it was unnecessary.

The roadmaster further testified that when the claimant failed to report for work he went to Alpine on August 24 and attempted to locate the claimant and had the claim agent make five trip to the claimant's house that afternoon in an effort to locate the claimant, and on the morning of August 25 three more attempts were made in an effort to locate the claimant. The roadmaster also testified that he then instructed a track foreman, a track supervisor and a track rider to attempt to locate the claimant.

The evidence indicates that the claimant did receive a release form from his doctor on August 20 advising that he could return to work. The claimant testified that H. F. Martens, assistant division engineer, at Alpine, advised him that he could not be made to return

to work until he felt better. However, the testimony of assistant division engineer H. F. Martens appears to be more reasonable and in line with what employees should be told under such circumstances.


It is also noted that the Organization objected to proceeding with the investigation on the basis that the claimant had received the wrong notice and that the claimant was unable to receive a fair hearing for the reason that he did not receive the notice in sufficient time in advance of the hearing to allow a reasonable opportunity to secure the presence of necessary witnesses and representatives.

The Board has carefully examined the notice of investigation and finds no fault with the procedure. The grievant and his representative had ample opportunity to obtain any witnesses they desired and to prepare a defense against the charges.


The evidence establishes that the claimant advised roadmaster McAlister that he would report for work on August 21 but was absent for that date and for ten days thereafter. Under those circumstances serious discipline is justified. However the claimant herein apparently had a good discipline record, and for that reason the Board finds 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

Dated at Chicago, Illinois
February 9, 1982