

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove New Mexico Division Trackman G. E. Griego from service was unjust.
2. That the Carrier now reinstate claimant with seniority, vacation, all benefit rights unimpaired and pay for all wage loss beginning December 17, 1982 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial evidence that proved that the claimant violated the rules enumerated in their decision, and even if claimant violated the rules enumerated in the decision, permanent removal from service is extreme and harsh discipline under the circumstances.

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 charged with absencing himself from duty without proper authority on November 8 and 9, 1982, and further that the claimant withheld information or failed to give all of the facts concerning his absencing himself from duty on those dates, and was further charged with being indifferent to duty, insubordinate, quarrelsome and/or vicious toward Supervisor D. D. Holloman on Wednesday, November 10, 1982.

An investigation was held, and pursuant to the investigation the claimant was found guilty on all counts and was dismissed from the service of the Carrier.

The Organization contends that the evidence is insufficient to establish that the claimant was guilty of the violations charged by the Carrier, and further if such a finding is supported by the evidence, permanent removal is harsh, arbitrary and unjust.

The investigation was convened, and the Organization objected because the claimant had not been notified in writing. The evidence reveals that the original notice of investigation was sent on November 12, 1982 by certified mail to the claimant's home address in Albuquerque and was refused by someone at that address on November 17, 1982. The claimant and his representative agreed that they were prepared to proceed with the investigation.

The transcript has been carefully studied, and all of the evidence has been considered. There can be no doubt but that there is some guilt upon the claimant. He was absent on November 8 and sent a wire which stated he was absent because of a funeral and then later admitted that this statement was untrue.

There is a conflict in testimony as to whether the foreman instructed the claimant to get off the bus and wait in the bunk car or simply look for the roadmaster before he commenced work. The evidence establishes that the claimant had a serious argument with his foreman the night before in the bunk car.

The evidence does not establish that the claimant cursed the roadmaster, but he did use curse words and foul language. However, there is a great deal of foul language used in the railroad industry. Also there is no evidence that the claimant in any way threatened the roadmaster.

Serious discipline is justified. Under the circumstances herein, and in view of the claimant's poor record, there is no justification for setting the discipline aside.

AWARD: Claim Denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member

Dated at Chicago, Illinois
February 17, 1983