

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 Los Angeles Division Trackman L. J. Gustafson from service was unjust.
2. That the Carrier now reinstate claimant with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held February 17, 1983 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 being absent without proper authority, and an investigation was held on February 7, 1983. The claimant was notified by certified letter of the investigation and a certified receipt was received by the Carrier. The claimant did not appear at the investigation.

The Assistant Division Engineer for the Los Angeles Division testified that the claimant was in his jurisdiction and had not reported for work since December 27. He further testified that another investigation had been held on Friday, December 17, and pursuant to that investigation the claimant asked to be marked up and was advised that he could do so, and the claimant stated that he would mark up on that date. The claimant did not request permission to be off.

The notice of investigation charged that the claimant was absent from December 27 without authority, but the evidence reveals that the claimant had been absent since December 17. However, the Carrier gave the claimant the benefit of the doubt since there were two doctor's statements releasing him to return to work, one for December 17 and one for December 27.

The claimant has demonstrated no interest in returning to work for the Carrier. This is indicated by his lack of interest in attending the investigation. Under the circumstances there is no justification for setting the discipline aside.

AWARD: Claim denied.

  
Preston J. Moore, Chairman

  
Organization Member

  
Carrier Member

DATED AT CHICAGO, ILLINOIS  
April 14, 1983