

PUBLIC LAW BOARD NO. 1532

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

STATEMENT OF CLAIM: That the Carrier's decision to remove Valley Division Trackman George Perez from service was unjust.

2. That the Carrier now reinstate claimant George Perez with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held August 26, 1983 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable 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 dismissal from service is extreme and harsh discipline under the circumstances.

FINDINGS: This Public Law Board No. 1532 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 from duty without proper authority on August 18 and 19, 1983. An investigation was held in Fresno, California on August 26, 1983 and pursuant thereto the claimant was found guilty and dismissed from the service of the Carrier.

The Assistant Roadmaster testified that the claimant failed to report for work on August 18 and 19 and further failed to call and advise that he would not report for work. The Chief Clerk and the Division Engineer testified that the claimant had a telephone call on August 17, and the claimant left work without checking with his foreman.

The Chief Clerk testified that she called the phone number regarding the claimant's absence but was advised that there was no information regarding the claimant. She left word for claimant to call the office and advise if there was an emergency, and if so, the nature of the emergency. She testified that later in the day she again called the same number and received no further information.

The Roadmaster's Clerk testified that on August 18 a man called identifying himself as the claimant's brother-in-law who stated that the claimant would not be at work that day. She further testified that the claimant called on the afternoon of August 19

and stated that he wanted to come in and attempt to clear himself. She testified there was no telephone call on the 18th from the claimant or his brother-in-law.

The claimant testified that on August 13 he was attempting to get his wife out of jail and for that reason had no time to call. He further testified that his young daughter became ill and he took her to the doctor's office and did not call into the office until August 19 when he called the Roadmaster's Clerk and advised her that he would like to speak to the Roadmaster personally and explain the matter. The claimant testified that he spent from 7:00 in the morning until 1:00 p.m. "running around trying to find a lawyer." (Page 14 of the transcript)

The claimant's brother-in-law testified that he called on August 18 advising that the claimant would not be able to report to work.

The Board has examined the entire transcript of record and all of the evidence presented. It appears that the claimant obviously had ample opportunity to call the Carrier and report the nature of his problems and advise that he would be unable to work. The claimant failed to do so, and for that reason serious discipline is justified.


However, under all of the circumstances herein it is the opinion of the Board that permanent dismissal is too severe. The Carrier is directed to reinstate the claimant 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
October 27, 1983