

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 Colorado Division Trackman P. A. Silva from service was unjust.
2. That the Carrier now reinstate claimant Silva with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held October 12, 1983 continuing forward and/or otherwise made while, 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 removal from service is harsh and extreme discipline under the circumstances.

FINDINGS: This Public Law Board 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 authority at La Junta, Colorado at 7:30 a.m. on October 5, 1983 in violation of Rules 2, 14, 15, 16 and 31B, General Rules for the Guidance of Employees, 1978. The claimant was also charged with being argumentative and acting in an insubordinate manner toward Roadmaster S. A. Goodall.


Pursuant to the investigation the claimant was found guilty and was dismissed from the service of the Carrier.

The transcript of record has been studied, and the evidence indicates that the foreman had, in effect, granted the claimant herein permission to go home. The claimant was involved in misconduct; he did talk in an insubordinate manner to the Roadmaster.


However, under the circumstances existing herein, it is the opinion of the Board that permanent dismissal is harsh, arbitrary and unjust. 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

 - Dissenting
Carrier Member

Dated January 5, 1984
at Chicago, Illinois