

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: Claim in behalf of Trackman P. T. Luna for reinstatement to his former position with seniority, vacation and all other rights unimpaired and compensation for wage loss beginning December 9, 1974.

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 his alleged violation of Rule 16 and dismissed from the service of the Carrier. Claimant failed to report for duty on November 4 and 6, 1974. The claimant testified he had been sick the night of November 3 and had overslept on the morning of November 4 and that he called the operator at Hutchinson about 9:00 a.m. and left a message to be delivered to the foreman as to why he had not reported for duty. Testimony indicates that the message was never delivered since the gang had gone to work at 8:00 a.m.

The claimant testified that on November 6 he called in before 8:00 a.m. and requested the operator to leave a message for the foreman that because of personal business he would be unable to work that date. The personal business involved the claimant's girl friend who was sick.

The claimant was assessed 20 demerits for violation of Rule 16 on account of his absence from duty on November 4 and 6, 1974. The claimant did not appear at the investigation. The representative did appear alleging he represented the claimant. The hearing officer advised the representative that he had not been advised by the claimant that he had requested a representative, and since claimant was not present to so advise the chairman of the investigation, the representative would not be allowed to remain. Although technically there is no fault with this proceeding, we can see no harm which would be done in allowing the representative to be present at the investigation.

Under the circumstances it appears to the Board that the claimant called in on both occasions and advised that he was unable to work, on November 4 because he was ill, and on November 6 he called prior to 8:00 a.m. and advised the reason he would be unable to work.

There is nothing in the record to indicate that the Carrier's representative objected to the claimant's not working. Under the circumstances, it appears to the Board that the claimant should be reinstated with seniority and all other rights unimpaired but without pay for time lost. The claimant's discipline record should be reduced to 40 demerits.

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