

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: That the Carrier's decision of June 15, 1984 to dismiss Trackman Gary L. Moore from its service was without just and sufficient cause and in violation of the current Agreement; That the Carrier now be required to reinstate Mr. Gary L. Moore to his former position with seniority and all other rights restored unimpaired and with compensation for all wage loss suffered.

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 employed as a trackman in 1974. The claimant was notified to attend an investigation by letter dated June 6, 1984. The investigation was held June 15, 1984 in Emporia, Kansas, to determine the facts and responsibility in connection with the claimant's allegedly taking a section truck at Melvern, Kansas, for his personal use on Sunday and Monday, May 27 and 28, 1984. The investigation was held as scheduled and pursuant to the investigation the claimant was found guilty and dismissed from the service of the Carrier.

The claimant admitted he appropriated section truck AT 33173 for his personal use on Sunday and Monday, May 27 and 28, 1984. The claimant admitted he did not have anyone's permission to use the truck. The claimant was going to take the truck to his home to help take the camper off the truck. He became stuck in a ditch before he reached his home.

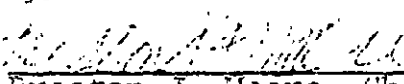
A Special Agent for the Carrier was called in to investigate the missing truck on Tuesday, the 29th of May, 1984. The Track Supervisor advised him that someone had apparently taken a section truck during Memorial Day weekend and returned it, but it had been abused. He stated the truck had been stuck to the extent that the side boxes were full of mud and water, the log chains covered with mud and thrown back in the storage compartment, the boom was covered with mud, and the boom had apparently been used since it had two hydraulic leaks in it. The truck had two tanks of gas. One tank was full and the other was half full. The one that had been half full was almost empty.

The Special Agent investigated and determined he should question


the claimant, who at first told him he didn't know what he wanted to talk to him about, but then stated, "You want to talk about the truck, don't you?" He testified the claimant first started to tell him he had been asked to get the truck unstuck, but then told him he had intended to borrow the truck on Sunday evening and use it to remove an 18½' camper from his truck at his home in Quenemo. The Special Agent stated he asked the claimant that if he had asked the Carrier to use the truck would they have let him and he answered, "I know there is no way they would let me."

The claimant testified he did not drive the truck very far, but used quite a bit of gas trying to get it unstuck, and that they used the boom trying to winch the truck out. He stated the chains "drug" on the road. Under the circumstances, there is no justification for overruling the decision of the Carrier.

AWARD: Claim denied. The Board notes that the claimant was also discharged on the same date in Award No. 321 and reinstated by this Board. The reinstatement will be set aside, since he was dismissed for his conduct in the instant case.


Preston J. Moore, Chairman


Union Member


Carrier Member