

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

Case No. 40. Claim in behalf of former Trackman L. Gurule, Jr., New Mexico Division, for reinstatement to his former position with seniority, vacation and all other rights unimpaired and compensation for wage loss beginning July 23, 1974.

Case No. 41. Claim in behalf of former Trackman L. Gurule, Jr., New Mexico Division, for reinstatement to his former position with seniority, vacation and all other rights unimpaired and compensation for wage loss beginning November 6, 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 being insubordinate while working at Willard, New Mexico on July 23, 1974 and with the possible violation of Rules 16 and 17. As a result of the investigation held August 1, 1974 the claimant was found guilty of being insubordinate and in violation of Rules 16 and 17 and was discharged from the service of the Carrier.

The Organization filed a claim for reinstatement of the claimant with compensation for all time lost. There was an offer by the Organization to compromise the claim on the basis of reinstating the claimant without pay. The Carrier accepted this offer but the claimant refused the compromise offer.

At first the claimant told the roadmaster at Belen he would report for duty, but later refused to do so. Another investigation was held to develop the facts and place the responsibility in connection with the claimant's absence from duty without authority. Pursuant to that investigation, the claimant was found guilty of being absent from duty without authority and was again removed from service.

Again the Organization filed claim for reinstatement of the claimant with compensation for wage loss beginning November 6, 1974. This portion of the claim is covered in Case No. 41. Again the Carrier offered to reinstate the claimant on a leniency basis, but the Organization refused.

After a careful review of the transcript and the record, it appears that Case No. 40 was disposed of by settlement between the claimant's representative and the Carrier. The Board did review the record to determine whether or not there is any justification in the first case. Certainly an offer of reinstatement without pay was reasonable, and there would have been no justification to pay the claimant for time lost since evidence indicates he was guilty as charged.

In Case No. 41 evidence of record indicates claimant agreed to return to work and was supposed to report for work October 3, 1974 but refused to do so.

In Case No. 40 testimony reveals that claimant made a rather nasty remark to his foreman which actually constituted insubordination. The foreman made a reasonable request for the claimant to pick up his shovel and to move over to the main line, and the claimant told the foreman to perform a feat which is performed by very few men. The claimant was guilty of insubordination, and certainly this justifies permanent dismissal.

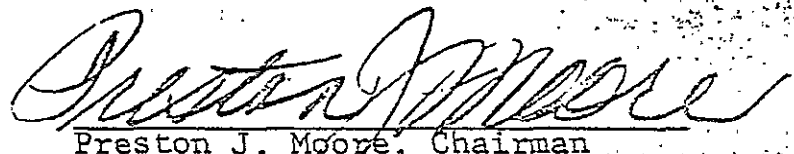
However, in view of the fact that the Carrier has offered reinstatement on several occasions, it is the opinion of the Board that the claimant should be reinstated. However, there is no justification for ordering pay for time lost. There are no supporting factors in favor of the claimant in either Case No. 40 or 41.

In Case No. 40 the claimant admitted his guilt, although he did insist his remarks were not directed to the foreman, although testimony indicates otherwise. In Case No. 41 the claimant refused to report for work after agreeing to do so, and certainly was absent from duty. There is no justification to overrule the decision made therein.

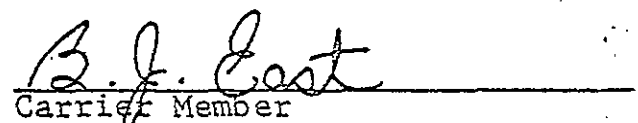
It is the finding of the Board that the claimant should be reinstated with seniority and all other rights unimpaired but without pay for time lost. The claimant will have to comply with the physical and other requirements set forth by the Agreement.

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