

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. Carrier's decision to remove former Plains Division Trackman B. R. Thurman from service, effective January 9, 1987, was unjust.
2. Accordingly, Carrier should be required to reinstate claimant Thurman to service with his seniority rights unimpaired and compensate him for all wages lost from January 9, 1987.

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 notified to attend a formal investigation in Amarillo, Texas on December 8, 1986 concerning his allegedly being absent without authority on November 11, 1986 and to determine the facts and place the responsibility, if any, involving possible violation of Rules 13 and 15 of the General Rules for the Guidance of Employees, 1978. The investigation was postponed until January 9, 1987.

Rule 13 reads as follows:

"Employees must not be absent from duty without proper authority, and when authorized absence is in excess of ten (10) calendar days, entire absence must be authorized by formal leave of absence (Form 1516 Standard) except for scheduled vacation period."

Rule 15 reads as follows:

"Employees must report for duty at the prescribed time and place and devote themselves exclusively to their duties during the tour of duty. Those subject to call for duty will be at their usual calling place, or provide information as to where they may be located. They must not absent themselves from duty, exchange duties or substitute other persons in their places without proper authority."

Foreman T. J. Keeling testified that he was an Extra Gang Foreman on Gang No. 60 in Woodward, Oklahoma. He stated that on November 11, 1986 the claimant did not report to work and that the following day he simply stated that he screwed up and didn't call.

Foreman Keeling stated that the claimant did not mention that he was sick on that date, but a note from a doctor was introduced stating that the claimant was under his care on the date in question. He also stated that the claimant knew where he was staying in Woodward, Oklahoma and could have called him. He also testified that the claimant worked the previous day and mentioned nothing about needing a day off for an appointment with the doctor.

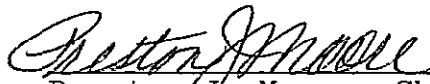
The claimant admitted he did not have permission to be absent on November 11, 1986 and that he did not work on that date. The claimant stated that he did not tell his foreman he was sick on that date because he did not think it was necessary. Claimant testified the doctor diagnosed his illness as bronchial pneumonia and he had to be in the hospital for two weeks.

The claimant testified that when he made the statement to Foreman Keeling that he screwed up, he was referring to the fact that he did not call, not the fact that he screwed up by being absent. He testified that his absence was due to his being very sick.

The Board has examined all the evidence of record, including the testimony and the exhibits submitted. The claimant's discipline record has been reviewed. Under the circumstances herein it is the opinion of the Board that permanent discharge 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

  
Union Member

*Dated at Chicago, Ill.  
August 31, 1987*

  
Carrier Member