

## PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: Carrier's decision to remove former Southern Division Welder Leroy Smoot from service, effective February 10, 1988, was unjust.

Accordingly, Carrier should be required to reinstate claimant Smoot to service with his seniority rights unimpaired and compensate him for all wages lost from February 10, 1988.

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 an investigation in Temple, Texas on March 10, 1988 concerning his alleged continuing failure to properly and completely perform the work assigned to him by his supervisors, including using an improper wire type and improper welding techniques in the months of December, 1987 and January, 1988.

The claimant was charged with possible violation of Rules 14, 16, 26 and 31B of General Rules for the Guidance of Employees, Form 2626 Std., and Rule 133 of Safety Rules for Santa Fe Employees, and Rules A, B, E, 1044 and 1045 of Rules, Maintenance of Way Structures, Form 1015 Std.

Pursuant to the investigation the claimant was found guilty and was dismissed from the service of the Carrier. The transcript contains 34 pages of testimony.

The claimant admitted using an improper wire type to weld on main track components in December and/or January. The claimant testified he did not knowingly use the wrong type of wire. The claimant further testified that about two weeks later he noticed he was having trouble, and he called the welding supervisor to discuss the problem with him.

Roadmaster Steve Anderson testified that on January 27, 1988 he learned they were having problems and that the claimant had used improper wire. He testified the use of the improper wire resulted in the frog points chipping out, and the frog inserts falling apart several weeks after the claimant had finished working with the Matweld.

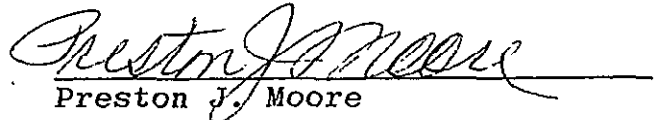
Roadmaster Anderson further stated that as a result of the premature failure, a slow order was used in some cases and they fixed what they could with the proper wire. He stated the slow speed was 10 miles per hour, and the normal speed was 55 miles per hour. The Roadmaster further testified that if the claimant did not have the proper wire, it was his responsibility to notify him so that he could provide claimant with the proper wire.

After reviewing all the evidence and testimony of record, the Board finds the claimant had 37 years of service with the Carrier, and his record was reasonably good for that period of time. The evidence established that the claimant was guilty as charged, but with his years of service and reasonably good record, the Board finds 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

*Dated at Chicago, Illinois  
August 18, 1988*

  
Organization Member

  
Carrier Member