

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. Pursuant certified letter dated October 17, 1989, claimant Hulsey notified of termination of his seniority and employment for being absent without authority for more than five consecutive work days beginning October 10, 1988. Formal investigation held on November 18, 1988 confirmed the above facts with claimant being removed from service.

2. Claim for reinstatement with seniority, vacation, all rights unimpaired and pay for all wage loss commencing October 10, 1988 forward until otherwise made whole account discipline issued is extreme, unwarranted, unjustified and unsupported by any Carrier rules.

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 by certified letter dated October 17, 1988 that his seniority and employment were being terminated for his being absent without authority for more than five consecutive work days beginning October 10, 1988.

The claimant requested an investigation which was held on November 18, 1988. Pursuant thereto the claimant was found guilty and was removed from the service of the Carrier.

The Union contended that the discipline assessed with extreme, unwarranted and unjustified and was unfounded and without merit.

The Board has studied the transcript of record and finds that the claimant testified he did not have authorization to be absent and stated he was charged with being in possession of illegal drugs and was incarcerated.

The Union contends the claimant's failure to protect his assignment was caused by his being in jail, and such precluded him from reporting for duty and/or obtaining permission to be off work.

The Board has had similar claims in the past. Being incarcerated does not prevent the claimant from notifying the Carrier that he

will not report for work. Other awards have similarly held that confinement in jail does not constitute unavoidable absence for good cause.

On the foregoing basis the Board finds there is no justification to set the discipline aside.

AWARD: Claim denied.


Preston J. Moore, Chairman

*Dated at Chicago, Illinois
August 22, 1989*


Union Member


Carrier Member