

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove New Mexico Division Trackman J. R. Torrez from service was unjust.
2. That the Carrier now reinstate Claimant Torrez with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 8:30 a.m., August 24, 1989 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, permanent removal from service is extreme and harsh discipline under the circumstances.

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 Belen, New Mexico on April 18, 1989 concerning a report alledging that he was absent without authority commencing January 16, 1989 and all subsequent dates thereafter, and to determine the facts and place the responsibility, if any, involving possible violation of Rule 1004 of the Safety and General Rules for All Employees effective April 1, 1989.

The investigation was postponed and was held on August 24, 1989. Pursuant to the investigation the claimant was found guilty and was dismissed from the service of the Carrier.

The transcript contains 20 pages of testimony. The Board has examined that testimony and the exhibits submitted by the parties.

C. B. Stone, Administrative Coordinator for the Carrier, testified that his duties were to oversee all maintenance of way positions and assignments. He testified that the claimant commenced a series of leaves of absence back in 1985. He also stated that a medical leave of absence in excess of ten calendar days was required to be covered by a leave of absence.

Mr. Stone further testified that the claimant had obtained three leaves of absence up to January 15, 1989. He then testified that

the claimant did not request a leave of absence for any time after January 15, 1989. He further testified the claimant did not return to work on January 16, 1989 or thereafter.

The claimant testified he did not return to work after January 15, 1989 and did not request another leave of absence on his own but just sent what the doctor gave him. He testified that he thought the last doctor's statement was sent on February 2, 1989.

Under the circumstances there is no question but that the claimant was in violation of the rules. The only issue before the Board is whether permanent dismissal is too severe. Under the circumstances the Board finds that 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.

*Date at Chicago, Illinois*  
*October 9, 1989*

*Preston J. Moore*  
Preston J. Moore, Chairman

*C. F. Fone*  
Union Member

*J. J. Pope*  
Carrier Member