

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 violated the Brotherhood's agreement when on May 15, 1974 they dismissed Gary D. Stroble from service without first receiving a fair and impartial investigation as required by agreement rules and that said agreement was again violated May 23, 1974 when after investigation was held, Carrier again reaffirmed their decision that paint foreman Gary D. Stroble be removed from service, such dismissal being arbitrary, unjust and in abuse of discretion by inflicting this drastic and excessive penalty on charges not sustained by the record.

2. That the Carrier now reinstate Gary D. Stroble to his former position of paint foreman on the Kansas City Division with seniority, vacation and all other rights unimpaired and compensate him for wage loss beginning May 15, 1974 continuing forward to date that he is restored to service.

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 applying paint to a private residence and the use of a company vehicle and company property not connected with company business during his assigned hours and his possible violation of Rules 3, 16, 17, 18 and 34 of General Rules for the Guidance of Employees, 1966, Form 2626 Standard.


The Organization objects to the claimant being withheld from service pending the hearing, and the Board would consider this issue except for the fact that the claimant was injured and unable to work anyway, so that question is moot.


The Organization contends that the hearing officer erred when he did not allow their request for the exclusion rule. A formal investigation is certainly not intended to be a court of law, and although it is a feeling of the referee that it would be for the best to grant the exclusion rule, we do not find that it is such a violation as to result in an unfair investigation. An investigation is held to obtain the truth and determine the events which took place with which the investigation is concerned.

The claimant stated that he had a brother who looked almost like a twin and that he was the man who was applying the paint to the

private residence. After reviewing all of the evidence, it is the opinion of the Board that there is more than sufficient evidence for the Carrier to reach a fair and just decision that the claimant was guilty as charged. Two Carrier witnesses testified that they saw the claimant and that they even checked the license tag of the truck which was company property. Under the circumstances herein the Board finds no justification for overturning the decision of the Carrier.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member

September 12, 1975