

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 Central Region Trackman J. S. Alaniz from service was unjust.
2. That the Carrier now reinstate claimant Alaniz with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held September 26, 1990 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 an investigation in Lubbock, Texas on September 26, 1990. The claimant was charged with being absent from duty without proper authority from August 20 through August 27, 1990. The investigation was held to determine his possible violation of Rules 1004 and 1007, Safety and General Rules for all Employees effective October 29, 1989.

Pursuant to the investigation the claimant was found guilty and was dismissed from the service of the Carrier.

Foreman F. S. Garcia testified he was the Extra Gang Foreman on Gang 50 and the claimant was working under his supervision during the month of August, 1990. Mr. Garcia testified the claimant had an emergency vacation the week of August 13.

Foreman Garcia stated the claimant did not report to work after completing this one week vacation. He also testified the claimant did not call him on August 20 or request authority to be off work. He testified he heard from the claimant on Saturday, August 25 at about 11:15 or 11:20, and at that time the claimant asked if he could give him another week's vacation. Foreman Garcia testified he could not do so, and he might have done something about it if the claimant had called on Monday or Tuesday, but he had not done so.

Foreman Garcia also testified he advised the claimant he had been off the entire week without permission and he could do nothing about granting his request for another week of vacation. He then testified the claimant said O.K. but advised he could not return until the following week. Mr. Garcia also testified the claimant did not report for work on August 27 nor did he call in on that date.

Roadmaster A. D. Rinne testified that his office did not approve any extension of the vacation time for the claimant.

The claimant testified he did not report for work on August 20 or any date during that week. He testified that when he called the Foreman, the Foreman advised him he was AWOL and he could not grant him any further vacation.

The claimant testified he did not attempt to call anyone else because he didn't know their phone number, and that included the other men who worked on the gang with him. The claimant stated the reason he did not attempt to call further was that he knew he already had 30 demerits and he believed his absence without leave which he had already experienced would be sufficient for the Carrier to discharge him.

The claimant testified he did not advise the foreman that his daughter was having problems giving birth to a child, and he was having serious problems. He also did not advise his foreman his car was broken down.

The claimant should have done both of these things, if such was the case, and certainly he should have reported these incidents to his foreman and give the Carrier some opportunity to justify granting a further vacation at that time. Under the circumstances a car breaking down is not much justification.

Also there is no evidence as to when the emergency in relation to his daughter was concluded and his need to be absent from work for a longer period of time. Such information would have been a matter for the Carrier to consider in reaching a decision of whether or not to grant the vacation.

When the claimant acted without giving the Carrier any opportunity to justify granting the vacation, he did so at the peril of his job. Apparently the claimant realized his job was gone and took off another week.

Under these circumstances the Board does not have the authority to set the discipline aside.

AWARD: Claim denied.

Preston J. Moore
Preston J. Moore, Chairman

Dated at Chicago, Illinois
November 21, 1990

C. F. Foor
Union Member

L. L. Pope
Carrier Member