

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

That the Carrier's decision to remove Southern Region Trackman R. N. Watson from service was unjust.

That the Carrier now reinstate Trackman Watson with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 9:00 a.m., Monday, April 1, 1991, continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved 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 on April 1, 1991 to develop all the facts and his responsibility, if any, in connection with possible violation of Rules A, B and 1007, Safety and General Rules for All Employees, Form 2629 Standard, effective October 29, 1989, concerning his alleged falsification of a duty-related personal injury reported by him to have occurred on March 7, 1991.

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

The Board has studied all of the evidence and testimony of record contained herein.

Section Foreman D. L. Mott testified that on Friday, March 8, he was told by Truck Driver Charlie Moore that the claimant would not be at duty that day because the claimant's wife had told him the claimant was off ill and was going to the doctor. Foreman Mott stated he never heard directly from the claimant regarding his absence. He also testified that Charlie Moore was not on his gang.

Foreman Mott then testified that when the claimant reported for work on the following Monday, March 11, he advised him he had pulled a muscle in his back. He stated he asked the claimant when this had occurred, and the claimant said he thought it happened at MP 160 at Caldwell on the previous Thursday, March 7.

Foreman Mott further testified that he took the claimant to Roadmaster Wagner's office, at which time the claimant told Roadmaster Wagner that he believed it happened on the job because he didn't do anything after work Thursday except go home and go to bed.

Foreman Mott stated the Roadmaster instructed him to obtain an accident report for the claimant to fill out and instructed the claimant to write a statement concerning this. He also stated the claimant did not report anything regarding an injury on March 7.

Foreman Mott testified the crew worked until 8:30 p.m. on the night of March 7 and took their evening meal from 8:30 to 9:30 p.m., and then the crew was released at 9:30 p.m. He also stated the claimant told him he did not experience pain until 11:00 p.m. on Thursday night.

Roadmaster J. E. Wagner testified that on March 11 Foreman Mott and the claimant came into his office and Foreman Mott advised him the claimant had been off on Friday, March 8 with a back injury, and the claimant had advised him it was a job injury.

Roadmaster Wagner testified he discussed with the claimant why he thought his pain was the result of something which occurred on the job, and the claimant said he felt he had done nothing physically at home so he reasoned it had to be something he had done at work.

The evidence establishes that the claimant went to see Dr. Marek, and in his record dated March 8, 1991 Dr. Marek stated the claimant had pain in his right sacral area for the past three days. The claimant testified he did not make that statement to the doctor. The claimant stated he was certain he received the injury on the job.

Any employee with the claimant's seniority is well aware that reporting injuries according to the rules is very important. Under the circumstances existing herein the Board finds that permanent dismissal from service is too severe. The only reason for so finding is because of the claimant's length of seniority. 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.

*Dated at Schaumburg, Illinois
August 5, 1991*

Preston J. Moore
Preston J. Moore, Chairman

C. J. Finner
Union Member

L. L. Popel
Carrier Member