

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 Eastern Region Machine Operator Dan B. Smith from service was unjust.

2. That the Carrier now reinstate Claimant Smith with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 9:30 a.m., July 22, 1991 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 Newton, Kansas on Monday, July 22, 1991 concerning a report of alleged unauthorized use of Company owned/leased equipment on July 5 and 6, 1991 near Hope, Kansas, resulting in a possible violation of General Rules B, 1007, 1009 of the Safety and General Rules for All Employees, Form 2629 Standard, effective October 29, 1989.

The claimant herein was a Machine Operator. Pursuant to the investigation, the claimant was found guilty and was dismissed from the service of the Carrier.

Track Supervisor John S. Anguiano testified he was the Supervisor on the Strong City Subdivision on July 5 and 6, 1991 and that the claimant worked Monday through Thursday, and the mowing machine was parked near the station sign at Hope, Kansas on July 4 and 5.

Supervisor Anguiano testified that on July 6 the machine was not there, and he notified Roadmaster Ron Kendall that the machine was missing.

Roadmaster Kendall testified that when Track Supervisor Anguiano advised him he could not find the weed mower, he went to Hope to look for it and located it on the claimant's property where the claimant was operating the machine.

Roadmaster Kendall further testified the claimant was removing some foundation around an 18 inch wall or a garage foundation. He stated he talked to the claimant who advised he was removing some foundation so he could mow around it. He further testified he instructed the claimant to return the weed mower to Hope, which he did. He stated he picked the claimant up at Hope and returned him to his home at Ramona. He testified he discussed the matter with the claimant who said he had gotten the machine around noon on Friday and kept it Friday night to use it Saturday.

The claimant testified and admitted all of the facts as previously stated, including the fact that no one authorized him to use the mower. The claimant admitted he used poor judgment and did not consider the consequences.

The claimant has many years of service with the Carrier with a good record. Under those circumstances the Board finds that the discipline assessed for the violation herein is excessive. The Carrier is directed to reinstate the claimant was 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.

Schaumburg, Illinois  
Dated September 17, 1991

Preston J. Moore  
Preston J. Moore, Chairman

C. J. Foss  
Union Member

L L Pope  
Carrier Member