

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. Carrier's decision to remove former Western Region Trackman B. L. Turk from service, effective October 15, 1992, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Turk to service with his seniority rights unimpaired and compensate him for all wages lost from October 15, 1992.

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 Union notes that the Carrier sent a certified letter to the claimant dated October 15, 1992 advising him that his seniority and employment were terminated account of his being absent beginning August 1, 1992 and continuing forward.

The Union points up that the Carrier's certified letter was forwarded to a General Delivery status and was not picked up by anyone until November 5, 1992 which was after the 20 day limit. It is urged the claimant was not aware of the dismissal until he took a new doctor's statement to Roadmaster Easley's office on November 24, 1992 and was advised of his dismissal.

The Union further contends that the claimant had been under a doctor's care since early February of 1992 suffering from a deficiency of his intellectual powers and had been under continuous care of a doctor.

The Union urges that the Carrier was aware of the claimant's illness and even if the claimant had reported for work sometime during the alleged absence, August 1 to October 15, he would have been denied an opportunity to work until the Carrier was satisfied that he was physically able to perform his duties.

On the foregoing basis the Union alleges that the Carrier violated the Agreement and terminated the claimant without just cause, and further, that even if the claimant violated the Letter of Understanding dated July 13, 1976 the discipline assessed is excessive.

The record establishes that the Carrier is required to notify the claimant of his termination by registered or certified mail, and

such was done. The Carrier also notified the General Chairman by registered or certified mail, as required by Appendix No. 11 and a Letter of Understanding dated July 13, 1976. The Carrier is not required to prove the employee received the certified letter, only that the letter was sent by certified mail to the employee's last address which was listed with the Carrier.

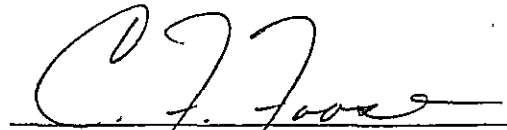
Under the circumstances herein the Board finds no justification to set the discipline aside.

AWARD: Claim denied.

*Dated at Schaumburg, Illinois
September 14, 1993*


Preston J. Moore, Chairman


Carrier Member


Union Member