

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. That the Carrier's decision to suspend Central Region Machine Operator M. R. Bargas from service for ninety (90) days was unjust.
2. That the Carrier now rescind their decision and pay for all wage loss as a result of investigation held 10:00 a.m., September 8, 1993 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, suspension from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement, particularly but not limited to, Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the claimant violated the rules enumerated in their decision.

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 August 18, 1993 to develop the facts and place his responsibility, if any, in connection with possible violation of Rules A, B and 1004 of the Safety and General Rules for All Employees, effective June 30, 1993, concerning alleged report he was absent without proper authority on July 19, 20 and 21, 1993.

Pursuant to the investigation the claimant was found guilty and issued a suspension of 90 days (Level 4) for his infraction of Rules A, B and 1004 of the Safety and General Rules for All Employees, effective June 30, 1993.

The Board has studied the transcript of the investigation and all of the testimony contained therein. The claimant admitted he did not call his Foreman or Roadmaster prior to or during July 19, 1993. Also the claimant did not contact either man on July 20 or 21.

The claimant did state that he talked to his Union Representative, Tony Wheeler. He also testified he had to go to the hospital in Lubbock, Texas and checked into the hospital on July 21, 1993.

After reviewing all of the testimony, it is the opinion of the Board that a 90 day suspension was excessive under all of the circumstances existing herein. The Board finds that anything in excess of a 30 day suspension is excessive. The Carrier is directed to reduce the suspension to 30 days and to pay the claimant for all time lost after 30 days.

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.

  
Preston J. Moore, Chairman

  
Union Member

Dated at Schaumburg, Ill.  
11-9-93

  
Carrier Member