AWARD NO. 517
CASE NO. 551

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 Southern Region Trackman E. L. Gildhouse from service for ten (10) days was unjust.

2. That the Carrier now rescind their decision and pay for all wage loss as a result of investigation held 9:00 a.m., April 15, 1994 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 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 in Oklahoma City, Oklahoma on Friday, April 15, 1994 to develop facts and place responsibility, if any, concerning his alleged late reporting and possible falsification of personal injury claimed on March 15, 1994 in connection with possible violation of Rules A, B, E, I, 1007, 1017 and 1024, Safety and General Rules for All Employees, Form 2629 Standard, effective June 30, 1993.

Pursuant to the investigation the claimant was found guilty of violation of Rule 1024 for late reporting of a personal injury. The claimant was suspended for ten days. Thereafter, the BMWE filed a claim in the claimant's behalf which is now before this Board for a decision.

The claimant's representative contended that the Notice of Investigation was vague in that it did not state how the late reporting was done. The Hearing Officer overruled this objection which was permissible since the evidence indicates the claimant was well

aware of what incident was being investigated and his possible violation of the rules.

Foreman T. L. Story testified that the claimant called him at 6:15 p.m. on January 13, 1994 and advised him that he did not come to work because he was having back pain and he had gone to a chiropractor for an adjustment. Foreman Story testified the claimant further stated he would not be in on January 14 because he was having another back adjustment.

Foreman Story testified he questioned the claimant as to whether or not he was claimaing an injury, and the claimant answered: "Not at this time." This witness testified he also asked the claimant what he thought had happened to his back, and the claimant replied that he did not know but did say "just walking on the ballast all day."

Foreman Story further testified that the claimant stated he had been having back pain for some time. Foreman Story testified that he then asked the claimant if he wanted to claim an injury, and the claimant replied "Yes", and when he asked the claimant in the injury was job related, the claimant said: "Yes, sir. I did." Foreman Story testified he then asked if the claimanbt was claiming an injury, and the claimant replied: "Not at this time."

Roadmaster L. W. Trimble testified he had been out of the city, but when he returned, he was advised of the claimant's possible injury. Roadmaster Trimble testified he talked to the claimant on January 18, 1994, and the claimant made a statement which was introduced into evidence.

This statement contained information as follows: The claimant stated his neck and back had been hurting him off and on for the last two or three weeks. Also, the claimant had been taking Advil, and he kept on working, but the pain became worse, and he went to a Ponca City Chiropractic on the 13th day of January, 1994 where x-rays were taken, and treatment was commenced. The claimant also stated he received treatments on January 13, 14, 17 and 18 as of that date, and he assumed he would have to continue daily treatments but did not know for how long or when he would be able to return to work.

Roadmaster Trimble also testified that when he talked to the claimant, the claimant stated he did not know how or when he might have hurt his back.

The claimant testified he sustained the job related injury during the period of January 3 to January 13, 1993, but he was not sure just what day it was. He testified the cause of the injury was pulling spikes, and the head of a spike broke off, causing him to fall.

The claimant testified he did not report the incident or the injury to his foreman or anyone else. The claimant stated the first time he reported the incident was on January 13 when he reported it to his foreman. The claimant did state he had a conversation with two other trackman about it.

Safety Rule 1024 states: "Employees injured while on duty and who remain on duty through the end of their daily shift or tour of duty must complete prescribed forms, giving time, place and cause of injury, before the end of their shift or tour of duty."

Rule 1024 continues as follows: "In all cases of injury the employee must also give his immediate supervisor prompt verbal notice of injury as soon as possible, but in no case later than end of shift, or tour of duty."

The evidence of record establishes that the Carrier had sufficient evidence to find that the claimant was guilty of violating the above rule. There is no evidence which would justify overruling the decision of the Carrier herein.

AWARD: Claim denied.

Dated in Schaumberg
May 24, 1994

Preston J. Moore, Chairman

Union Member

L L Pope
Carrier Member