

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 Group 11, Trackman, Emerson Etsitty from service was unjust.
2. That the Carrier now reinstate Claimant Etsitty with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of Investigation held 9:00 a.m., January 11, 1995 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, removal 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 a formal investigation on January 11, 1995. The claimant was charged with being absent from duty without proper authority from September 26, 1994 and subsequent dates.

Pursuant to the investigation the claimant was issued a Level 5 dismissal from employment for violation of Rules 1000, 1004 and 1007 of the Safety and General Rules for All Employees, Form 2625 Standard, dated June 30, 1993.

The investigation was scheduled for 9:00 a.m. on January 11, 1995. P. C. Wolfersberger, Assistant General Chairman for the BMW, appeared to represent the claimant. The claimant had not appeared by 9:17 a.m.

At 9:34 a.m. the Hearing Officer noted the claimant had not appeared and the hearing was recessed for approximately another 30 minutes to give the claimant an opportunity to appear. At 10:10 a.m. the Hearing Officer determined the investigation should proceed even though the claimant was not present.

The Carrier introduced letters dated October 11, October 31, November 11 and November 16, 1994, all of which regarded the investigation of the claimant's conduct. The Carrier introduced certified receipts of notice to the claimant of the time and place of the investigation.

The Board had studied the evidence of record and notes that the evidence is sufficient for the Carrier to find the claimant was guilty as charged.

D. Gonzales, Roadmaster in the Commuter Rail Project, testified that the claimant's last day at work was September 13, 1994. He further stated that he gave the claimant permission to be absent on September 14, 15, 16, and the week of September 19 through 23. He then testified the claimant continued to be absent without permission.

There is some evidence that the claimant may not have been aware that the investigation scheduled in December was postponed. Also it is noted the claimant's employment record does not contain discipline assessed.

Under the circumstances the claimant will be reinstated with seniority and all other rights unimpaired but without pay for time lost. This is not to establish a basis that employees who contend they did not receive notice of the investigation may not be subject to discharge.

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*  
*February 28, 1995.*

*Preston J. Moore*  
Preston J. Moore, Chairman

*C. F. Foss*  
Union Member

*L. L. Pope*  
Carrier Member