

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: That the Carrier violated the terms of the Agreement when they dismissed Trackman J. Taylor from service on October 29, 1975, said dismissal being arbitrary, excessive and in abuse of discretion. That the Carrier now reinstate J. Taylor with seniority, vacation and all other rights unimpaired and that he be compensated for loss of earnings beginning October 30, 1975 continuing forward until he is reinstated to service.

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 charged with being absent from duty without authority. The claimant was employed on extra gang 30370 at Gallup, New Mexico. When the foreman handed out the pay checks on Tuesday, September 16, he notified the employees to be sure and report without fail the following day.

The claimant failed to report for duty on September 17, and it was later learned he was in jail and unable to report for service. According to the claimant's testimony he was not allowed to make a telephone call.

The claimant was notified that this case was going to be heard before this Public Law Board and was advised that he was privileged to be present in person or by a representative of his choice if he so desired. The claimant did not appear, and the Union represented him in this case.

The Carrier introduced into evidence the claimant's past record and during the claimant's four years of service with the carrier he had been discharged twice and reinstated on a leniency basis. At the time of discharge, the claimant had accumulated fifty demerits.

The carrier considered leniency, but in studying the record, found that the claimant was simply unable to work on Mondays. Evidence indicates that the claimant buried his grandfather four or five times on a Monday.

The claimant admitted he was absent without authority after being specifically directed to be present for duty, and his credibility leaves a great deal to be desired. It is possible perhaps that the claimant would not be allowed to use the phone in jail to call his wife, but this seems unlikely.

The claimant admitted his guilt, and under the circumstances, the Board is without authority to overrule the decision of the Carrier.

AWARD: Claim denied.

sd/ Preston J. Moore
Preston J. Moore, Chairman

sd/ S. E. Fleming
Organization Member

sd/ B. J. East
Carrier Member