

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: Claim in behalf of former Track Foreman L. D. Hurst for reinstatement to his former position as Track Foreman on the Southern Division with seniority, vacation and all other rights restored and compensation for time lost beginning July 24, 1976 continuing forward until he is restored 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 a formal investigation was held on July 23, 1976 to determine the facts and place the responsibility in connection with the claimant's alleged failure to post work done, time worked and material used in pocket time book while relieving as foreman during the period from May 31, 1976 to June 11, 1976.

Pursuant to the investigation the claimant was found responsible for the violation of Rule 776 and was assessed thirty demerits. This made a total of seventy demerits against the record of the claimant, and he was dismissed from the service of the Carrier.

The Organization contends that the claimant did not receive a fair and impartial hearing and that the Carrier failed to require two necessary witnesses to be present at the investigation. The transcript reveals that the Organization requested the presence of these two witnesses. The Carrier postponed the investigation and invited the two witnesses to appear but they failed to appear.

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

The evidence and testimony of record indicates that the claimant was guilty of violating Rule 776. However, these two witnesses might have testified to certain evidence which would have resolved some of the conflict of testimony. Under the circumstances it appears to the Board that the Carrier erred in not requiring these two witnesses to be present at the investigation.

Therefore, the demerits assessed will be reduced to ten demerits which leaves the claimant with fifty demerits of record. Thus dismissal is not justified. It is the finding of the Board that the claimant will be reinstated with seniority and all other rights unimpaired and with pay for time lost, less any earnings which the claimant had for that period of time. The claimant is required to furnish the Carrier with all information regarding his earnings during this period of time prior to reinstatement. The Board will retain jurisdiction on this case until the matter has been resolved.

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.

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

sd/ S. E. Fleming
Organization Member

sd/ B. J. East
Carrier Member