

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: Claim in behalf of former Trackman J. D. Menges Colorado Division, for reinstatement to his former position with seniority, vacation and all other rights unimpaired and compensation for wage loss beginning December 31, 1977.

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 possible violation of Rules 2, 16 and 17, General Rules for the Guidance of Guidance of Employees while on Extra Gang 63 about 9:30 a.m. on December 9, 1977 near Canon City, Colorado. Pursuant to the investigation the claimant was found guilty and was discharged from the service of the Carrier.

The Organization contends that the charge was not specific, there was a violation of due process and that the investigation was not fair and impartial. The Organization also contends there was animosity by the foreman toward the claimant herein. The Organization also contends that the remarks made by the claimant were commonly used by all members of the gang on dates prior to the alleged incident.

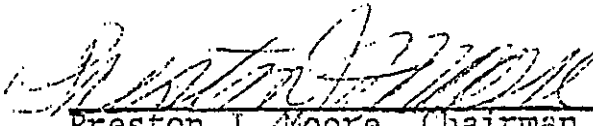
After studying the transcript of record and all the evidence involved, it appears that the claimant was guilty of insubordination and was involved in a verbal altercation with his foreman.

It is apparent that the claimant and his representative were well aware of the charges and exactly what was involved. However, an exception taken by Mr. Fleming during the investigation was well taken. The charges should have been explicit in charging the claimant with cursing and verbally abusing his foreman. The fact remains that the claimant knew why he was being investigated, and all of the evidence establishes that the claimant was guilty.

However, under all the circumstances involved herein, it is the opinion of the Board that permanent dismissal is too severe. Therefore the Carrier is directed to reinstate the claimant with seniority and all other rights unimpaired but without pay for time lost.

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

  
Organization Member

  
Carrier Member

Dated November 27, 1978