

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 R. E. Gonzales for removal of 20 demerits assessed Mr. Gonzales' personal record as a result of a formal investigation held in LaJunta, Colorado on February 6, 1978 to determine his responsibility in connection with his possible violation of Rules 2 and 15, General Rules for the Guidance of Employees 1975, Form 2626 Standard, concerning his failure to protect his assignment on January 24, 1978.

That the Carrier violated the Agreement between the parties particularly, but not limited to, Article V thereof when Carrier dismissed Mr. R. E. Gonzales from service as a result of an investigation held February 22, 1978, said dismissal being arbitrary, excessive and in abuse of discretion. (2) that the Carrier now reinstate Mr. Gonzales to service with seniority, vacation and all other rights unimpaired and with pay for time loss commencing February 22, 1978 and continuing forward until the date of reinstatement.

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 assessed twenty demerits as the result of an investigation held February 6, 1978. Thereafter on February 22, 1978 a second investigation was held, and the claimant was dismissed from the service of the Carrier for having accrued in excess of sixty demerits.

The claimant had been reinstated to service on a leniency basis on January 17, 1978 with forty demerits on his record. The claimant was instructed to report for duty on Monday, January 23, 1978. Claimant contends he attempted to report for duty to Extra Gana No. 63 headquartered at Colorado Springs but was unable to do so because he had difficulties with his automobile. The claimant also contends that he was unable to report for duty on January 24, 1978 because of a snowstorm.

Evidence indicates that other employees also were unable to report for duty on January 24 because of the snowstorm and hazardous road conditions.

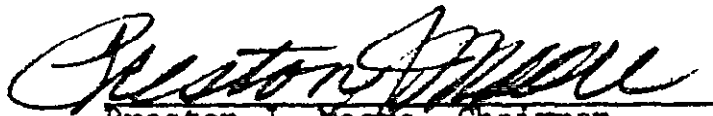
The Board has carefully examined all of the evidence and the circumstances herein. Under the circumstances and conditions existing, it

is the opinion of the Board that the action of the Carrier herein was harsh. It is recognized that the claimant had a poor record, but nevertheless there were certainly extenuating circumstances existing on January 24.


The Board finds that the claimant should be reinstated with seniority and all other rights unimpaired but without pay for time lost. The Board also finds that the claimant should be given credit for four months with a clear record and ten demerits removed from his record, which would leave his record standing with thirty demerits when reinstated.

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