

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 suspend Eastern Region Trackman D. W. Irvin from service for 45 days and a 90 day deferred suspension was unjust.

2. That the Carrier now rescind their decision and pay for all wage loss as a result of investigation held 2:00 p.m. July 21, 1994 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved that the claimant violated the rules enumerated in their decision, and even if claimant violated the rules enumerated in the decision, suspension 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 an investigation in Newton, Kansas on Wednesday, July 13, 1994 to develop the facts and place his responsibility, if any, in connection with a possible violation of Rules A, B, D, 1000, 1004 and 1007, Safety and General Rules for All Employees, effective June 30, 1993, as amended, modified or supplemented, concerning his being A.W.O.L. on June 15 and 16, 1994.

Pursuant to the investigation the Carrier found the claimant was guilty of violating the rules charged and assessed a Level 3 suspension of 45 days and a deferred suspension of 90 days. The Union filed an appeal which is now before the Board for a decision.

The claimant testified that he had diarrhea and had no phone at his residence. He testified he got a neighbor to call his foreman on June 15 and advise him that he was sick and would not be able to work that day.

Diana Carriger, the claimant's neighbor, testified that on June 15 when she called the foreman, Mr. Alvarez said "O.K." She further testified that on June 16 she again went to a pay phone and advised

Mr. Alvarez that the claimant would not be in on that day, and Mr. Alvarez replied: "O.K., but please have him call and try to get hold of Pat Zenner today."

Representative Wolfersberger introduced a letter from the claimant's doctor which established that the claimant was subject to hypoglycemia which results in spells of diarrhea.

The claimant testified that he had been told that if he was going to need to take off work or be late, he would personally have to call the Roadmaster in his territory, P. E. Zenner.

It is noted the claimant was charged with violating Rules A, B, D, 1000, 1004 and 1007, and the Carrier found the claimant guilty of a violation of all those rules.

In this regard the Board has studied the transcript of record and finds that the evidence does establish that the claimant was guilty of violating Rules D, 1000 and 1004. However, the evidence is insufficient to establish that the claimant was guilty of violating Rules A, B or 1007.

The claimant was responsible to report his being unable to work. The evidence fails to establish that the claimant was unable to reach a pay phone, and he did not request his friend and neighbor to contact Mr. Zenner. It is noted the claimant testified he had been instructed to contact Mr. Zenner personally if he was unable to work.

Consequently, the claimant definitely violated Rule 1000. Also it is noted that when the claimant's friend called his foreman on the second day of his absence, she was requested to advise the claimant to call Mr. Zenner, and the claimant did not do so. The Board does recognize that the claimant's friend did not advise him until after 5:00 p.m. that evening that he was supposed to call Mr. Zenner.

Under all of the circumstances herein the Board finds that the claimant was guilty of a violation which justified discipline. This referee has always been hesitant to modify discipline, but under these circumstances herein existing, a 30 day suspension is the maximum which could be justified.

Therefore, the Carrier is directed to reduce the discipline to 30 days suspension, and no days of a deferred suspension.

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.

Take at Schaumburg
August 17, 1994

Preston J. Moore
Preston J. Moore, Chairman

C. J. Fove
Union Member

L. J. Pope
Carrier Member