

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 violated the Agreement when on July 15, 1974 D. A. Dennis was removed from service as a Welder Helper, Illinois Division, without benefit of a fair and impartial investigation as stipulated in Article V of the Parties' Agreement.

2. That the Carrier shall reinstate D. A. Dennis to his former position with seniority and all other rights unimpaired and compensate him for wage loss suffered subsequent to his removal from service July 15, 1974.

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 employed as a trackman on May 13, 1974. On the 60th day after the claimant had been employed, the superintendent decided to disapprove claimant's application for employment. The superintendent addressed a letter to the claimant at the point of his residence dated and mailed on July 12, 1974 via certified mail notifying the claimant that his application for employment had been disapproved.

An attempt was then made to contact the claimant's foreman via the radio in order that the foreman could notify the claimant that his application had been disapproved, but radio contact could not be made. The claimant did not receive the certified letter until July 15, 1974.

The division engineer sent a wire addressed to the claimant in care of a roadmaster (claimant's immediate supervisor) at Marceline, Missouri requesting that roadmaster Harbuck try to contact the claimant before Monday, July 15.

The evidence in regard to the wire is confusing. If the letter to the claimant was postmarked July 12, the claimant was removed from service within sixty days from the date of employment as provided for in the Agreement, as set forth in Award No. 1 of this Board.

Evidence of record indicates that the decision was placed in the United States Mail on July 12, the sixtieth day after the claimant had commenced work. This referee has held many times that a decision being made by the Carrier must be out of the Carrier's hands on the date in question; in other words, sent or mailed.

Also, the Board notes that First Division Award No. 16366 held that "rendered" meant sent -- that merely writing the decision is not enough. The written decision must be dispatched. On the other hand, "rendered" does not mean delivered or received by the employee. Therefore, it appears to the Board that the decision was made and properly rendered.

Because of all the confusion and the circumstances surrounding this case, the Carrier has agreed 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

September 12, 1975