

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: Claim in behalf of former Northern Division
Trackman C. D. Bedford as follows:

(1) Based upon the Carrier not giving Mr. Bedford time to prepare defense or obtain representation for himself or even for him to appear at investigation, we respectfully request that Mr. Bedford be reinstated to service with seniority vacation and all other benefits rights unimpaired, and with compensation for neg wage beginning August 26, 1978 continuing forward until his reinstatement.

(2) Also it is our understanding that the Carrier has failed to compensate Mr. Bedford allpay for vacation accrued at time of his dismissal. Therefore we also request that Carrier compensate Mr. Bedford for all vacation time earned up to August 16, 1978.

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 being absent without proper authority from July 27 to August 25, 1978. An investigation was held, and pursuant to the investigation, the claimant was discharged for being absent from duty without authority. The claimant was found guilty of violation of Rules 13 and 15.

The Brotherhood of Maintenance of Way Employees filed a claim for reinstatement of the claimant with seniority, vacation and all other benefit rights unimpaired and compensation for net wage loss commencing August 26, 1978.

The claimant worked on July 26, 1978 and shortly before completing his tour of duty that day advised his foreman that he had family troubles and needed to be off work July 27. Evidence of record indicates the claimant admitted he was absent without leave in excess of ten days.

On August 4 the claimant telephoned the agent at Marietta, Oklahoma and left word that he was attending to personal business. On August 8 the claimant called the agent at Ardmore, Oklahoma and left word that he had been in jail twice and would try to be at work August 9.

On August 14 the claimant called the Division Engineer and advised that he had been off because of family problems and had been in jail. The claimant asked if he could return to work, and he was instructed to report to extra gang No. 71 on August 21. The claimant did not return to work pursuant to the offer of August 14.

Evidence indicates that the claimant did not file any request for a formal leave of absence.

The Board recognizes that the claimant had serious problems regarding custody for his children.

After carefully examining all of the evidence and testimony, it is the opinion of the Board that the claimant failed to live up to his responsibilities. It is also recognized that the claimant had a poor record. He had previously been disciplined six times for being absent without proper authority.

However, in view of all the circumstances herein, i.e., his being jailed in an attempt to gain custody of his children, it is the opinion of the Board that permanent dismissal is too severe. Therefore, the Board finds that the claimant should be reinstated 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

L. E. F. Herring
Organization Member

B. J. East
Carrier Member