

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: Claim in behalf of former trackman J. W. Johnson, Middle Division, for reinstatement to his former position with seniority, vacation and all other rights unimpaired and compensation for wage loss beginning August 23, 1974 continuing forward to date he is returned to service.

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 from duty without authority commencing July 15, 1974 in violation of Rules 2, 3 and 16 of the General Rules. The Organization contends that the claimant had been ill and was unable to work and that discharge was not justified in the circumstances herein.

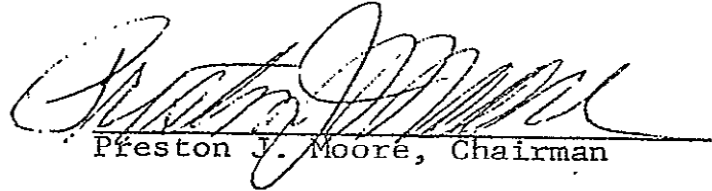
The Carrier contends that the evidence of record clearly indicated and established that the claimant was absent from duty without authority commencing July 15, 1974. The Carrier further contends that even if the claimant's removal from service was improper that there is no basis to sustain the claim inasmuch as the claimant was medically disqualified from performing his usual duties and responsibilities.

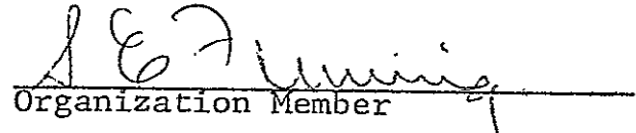
The evidence of record supports the position of the Carrier that the claimant was absent without leave and discipline was justified. Under the circumstances it is the opinion of the Board that permanent discharge was harsh, arbitrary and unjust. It appears that the claimant may be unable to pass a physical examination for reinstatement, but he should be allowed that opportunity if he so desires.

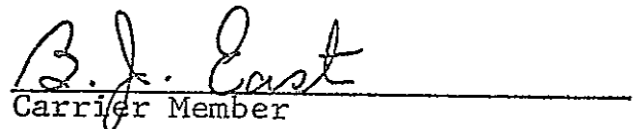
It is the finding of the Board that the claimant should be reinstated with seniority and all other rights unimpaired but without pay for time lost provided he can pass the medical examination by the Carrier and provided he has not been medically disqualified from service.

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

January 2, 1976