

AWARD NO. 117
Case No. 143

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: (1) That the Carrier violated the Agreement when they suspended Track Supervisor T. M. Martinez from his duties between the dates of June 8 and July 18, 1979 without just and sufficient cause.

(2) That the personal record of Mr. Martinez be expunged from any reference to his suspension and that he be compensated for loss of earnings suffered account the Carrier's improper action.

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 a track supervisor on the Los Angeles Terminal Division. The claimant was assisted by a trackman and on June 7, 1979 the trackman informed the claimant that he needed to be absent that afternoon for the purpose of accompanying his wife to a medical facility for treatment.

When the claimant notified his supervisor, the roadmaster, of the trackman's anticipated absence, the roadmaster requested that a doctor's statement be furnished. The following day the roadmaster reiterated his request for a doctor's statement.

The claimant advised the roadmaster that the trackman was a conscientious, dedicated employee who endeavored to protect his assignment, and there was no doubt in his mind as to the validity of the trackman's request. The claimant further urged that it was an imposition to require this employee to secure a statement from the doctor. The roadmaster insisted, and the discussion ended in a verbal confrontation. At this point the Superintendent and Division Engineer were drawn into the dispute and the decision was made to suspend claimant, pending investigation. However, after some thought, the Superintendent decided to hold claimant out of service pending medical evaluation. On June 12, 1979 the claimant was instructed to report to Dr. E. F. Walker for an examination. The examination was conducted, and the claimant returned to work on July 18, 1979.

On July 24, 1979 the Organization filed claim with Superintendent D. M. Miller requesting that the personal record of the claimant be expunged of any reference to the suspension and that he be compensated for loss of earnings.

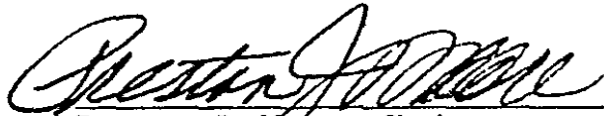
The Carrier contends that the claimant had made a statement to the Superintendent, division engineer and roadmaster that he was unable to safely perform his duties due to his mental condition. This statement is denied by the claimant.

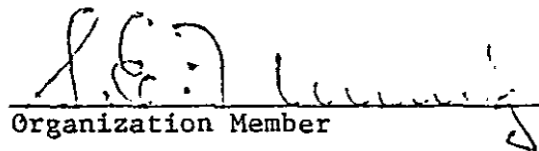
There are several conflicting views in this matter. It is obvious that the claimant herein is a dedicated employee who is interested in the welfare of the Carrier and is also concerned about the welfare of the trackman working with him.


However, it further appears that the claimant may be too strong willed, and after having urged and recommended to the roadmaster that a medical certificate was not necessary, he persisted beyond what was justified. There are limits to which an employee may push a supervisor, and when those limits are passed, such conduct becomes unjustified, and the supervisor is not required to condone such conduct. Such appears to be the case herein.

Without doubt, the claimant is a good employee and has good intentions. This referee is strongly supportive of any employee who has characteristics. However, under all the circumstances existing herein the evidence does not justify setting aside the discipline involved.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member

Dated April 7, 1980