

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier violated Article V of the Agreement by unjustly removing Valley Division Welder Helper E. A. Jiminez from service October 20, 1978 after a formal investigation held same date.
2. That the Carrier now reinstate Mr. Jiminez to service with seniority, vacation, all other benefit rights unimpaired and compensation for all wage loss beginning October 20, 1978 continuing forward.

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 absent from duty without proper authority September 15, 21, 22, 1978. An investigation was held at Fresno, California on October 20, 1978 to determine the facts and place the responsibility, if any, involving the claimant's possible violation of Rule 15.

The Carrier notified the claimant by certified mail of the investigation, but the letter was not delivered. The Carrier then notified the Division Engineer and requested that he deliver the notification by hand. However, the Division Engineer's office was unable to locate the claimant, and therefore the claimant was not aware the investigation was being held.

The claimant did not attend the investigation. A representative of the Union attended the investigation and desired to represent the claimant, but the Carrier refused to allow him to participate. The Union representative also requested a postponement of the investigation, and this request was also denied. The Union contends that the claimant did not have a fair and impartial investigation.

The evidence of record indicates that the investigation had been postponed previously upon request of the Vice General Chairman. Since the Carrier was not able to locate the claimant, and the claimant had not requested representation at the investigation, the Board finds there is no error or prejudice to the claimant's


rights in proceeding with the investigation and with refusing to allow the Organization to represent the claimant when he had not requested representation.

After examining all the facts and evidence of record, there is no justification to overrule the decision of the Carrier.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member