

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 the collective bargaining agreement between the parties when they dismissed Trackman C. W. Thompson from service May 21, 1979, said dismissal being excessive and arbitrary.
2. That the Carrier now compensate claimant Thompson for all wage and benefit loss from June 21, 1979 until October 31, 1979, inclusive.

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 August 22, 1977. On May 21, 1979 the Carrier wrote to the claimant advising him that he was terminated because of being absent in excess of ten calendar days without authorized leave of absence from May 9, 1979 through May 21, 1979. The claimant was found guilty and remained out of service.

The Organization filed claim for reinstatement. Sometime thereafter the claimant was reinstated by letter dated October 22, 1979 and performed his first service on October 31, 1979. Therefore, the sole issue before this Board is the pay for time lost between May 21, 1979 and October 31, 1979.

The Organization contends that other employees were not required to obtain leave of absences when they were off duty because of on-duty injuries.

The Board has reviewed the transcript of record, and there is no doubt but that the claimant was absent in excess of ten calendar days without an authorized leave of absence. However, it is likewise equally apparent that the Carrier was well aware that the claimant had had an on-the-job injury.

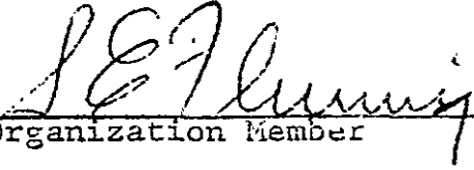
The evidence also indicates that the Carrier does not apply the leave of absence rule equally to all employees. If the ten day rule is going to be strictly enforced by the Carrier, it must be equally applied to all employees, and the employees must be aware that such rule is going to be strictly enforced. This ruling applies to those types of cases wherein the Carrier is aware that the claimant has been injured and is unable to perform service.


It is recognized that in the instant case the Carrier introduced evidence that the claimant had signed a card that he had taken an examination on the rules. It is insufficient to advise the employees that the rule is going to be strictly enforced and then enforce the rule against some employees and not against others.

On this basis it is the opinion of the Board that the claimant is entitled to be paid for all time lost from May 21, 1979 through October 31, 1979.

AWARD: Claim sustained.

  
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Preston J. Moore, Chairman

  
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Organization Member

  
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Carrier Member