

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's decision to remove Southern Division Miscellaneous Machine Operator G. B. Burk as result of formal investigation March 12, 1982 was unjust.
2. That the Carrier now reinstate Claimant Burk to his former position with seniority, vacation, all benefit rights unimpaired and pay for wage loss beginning March 12, 1982 continuing forward and/or otherwise made whole because a review of the transcript does not reveal that substantial evidence was introduced on record which indicated that claimant Burk was guilty of violating Rules 14, 16 and 29, General Rules for the Guidance of Employees, and even if record contained substantial evidence indicating that claimant violated the Carrier's rules heretofore quoted, the Carrier's decision to remove claimant is excessive and harsh discipline.

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 assigned as a Southern Division Miscellaneous Machine Operator. The claimant was charged with violating Rules 14, 16 and 29, General Rules for the Guidance of Employees. The claimant was specifically charged with taking a company dump truck, AT 37673, for his own use on February 5, 1982 and keeping the truck until February 11, 1982 while assigned as machine operator at Somerville, Texas. Pursuant to an investigation the claimant was found guilty and was dismissed from the service of the Carrier.

The Board has examined the transcript of record and finds that the claimant testified he did not have permission to take the dump truck involved to his home, but on the afternoon of Friday, February 5, 1982 he did not have a way back to his vehicle which was in Temple, Texas and he simply took the company truck to Hillsboro.

The claimant admitted that he did not request permission to take the truck and that he kept the truck at Hillsboro until Thursday, February 11, 1982. He testified that on February 8, 9 and 10 he was at Hillsboro, Texas at his parents' home at 700 Broadway. He further stated that he called in for permission to be off from February 8

through February 10 but conceded that he did not tell either of the employees that he talked to that he had the dump truck.

The evidence indicates that the claimant had his own pick-up at Temple, Texas but elected to take the Company dump truck to the place where he was staying in Hillsboro, Texas, which is 75 miles north of Temple, rather than to stop in Temple and use his own pick-up truck. The claimant testified that the fuel pump was out on his pick-up, and he did not feel like working on it.

The roadmaster testified that he did not give the claimant permission to use the dump truck for transportation from Somerville to Hillsboro, and the claimant's use of the truck would be against Company policy. He further testified that he had instructed the claimant approximately two weeks prior to February 5, 1982 for him to leave the truck in Somerville on Company property.

After reviewing all of the testimony, the Board finds that claimant was responsible for the violations cited. However, the Board finds that the discipline assessed should be reduced to a suspension and that the claimant should be reinstated to service with seniority and all other rights unimpaired but without pay for time lost, such reinstatement to be effective July 5, 1982.

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

Dated at Chicago, Illinois  
May 28, 1982

  
Carrier Member