

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 J. L. DelaRosa for reinstatement to his former position with seniority, vacation and all other rights unimpaired and compensation for wage loss he might have suffered as a result of his removal from service August 17, 1973.

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 dismissed from the service of the Carrier for violating Rule 16. The claimant was absent from duty without authority commencing July 19, 1973.

The Carrier investigated and discovered that the claimant was in jail for 90 days for being convicted of drunken driving. The Organization contends that the Carrier held an investigation and that only hearsay evidence was introduced. The claimant was not present at the investigation, and the Carrier did not notify the Organization. Consequently, the claimant was not represented at the investigation.

The Board has examined the evidence of record, and there is sufficient evidence to find that the claimant was certainly guilty of violating Rule 16. Apparently he was absent before he was confined to the jail.

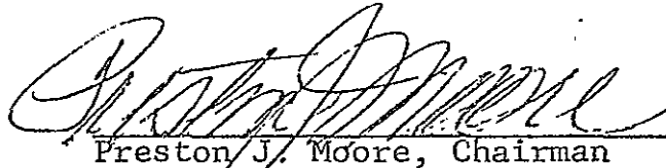
Although under the Agreement the Carrier is not obligated to notify the Organization that an investigation is being held on an employee, it is the feeling of the Board that when the Carrier has knowledge that the claimant is confined or unable to attend an investigation that they should notify the Organization that an investigation is to be held.

The evidence is sufficient to find that the claimant is guilty of the charge, but apparently the claimant has a good record and it is the opinion of the Board that permanent dismissal is harsh,

arbitrary and unjust. For that reason the claimant will be reinstated with seniority and all other rights unimpaired but without pay for time lost.

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.



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Preston J. Moore, Chairman



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Organization Member



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Carrier Member

January 2, 1976