

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's decision to remove New Mexico Division Trackman T. C. Griego from service was unjust.
2. That the Carrier now reinstate Claimant with seniority, vacation, all benefit rights unimpaired and pay for all wage loss beginning July 13, 1982 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, permanent removal from service is extreme and harsh discipline under the circumstances.

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 charged with being absent without proper authority on June 1, 2, 3 and 4, 1982. A formal investigation was held at Albuquerque, New Mexico on Friday, June 18, 1982. Pursuant to the investigation, the Carrier found that the claimant was in violation of Rules 2 and 15, and the claimant was removed from service. The claimant appeared at the investigation but failed to have a representative and waived representation.

The claimant was assigned to Foreman Santos Abeyta (foreman of extra gang 66) who testified that the claimant did not obtain permission to be off on any of the dates in question. Foreman Abeyta testified that this affected the work since on one day he was short several men.

The claimant admitted that he did not have authority to be off on the four days in question. The claimant testified that his last day of work was a Thursday, and he talked to his foreman on Friday morning and informed him that he would have to leave Fort Sumner to return to Albuquerque to look after his health impediment. The claimant conceded he requested to be off work Friday, May 28 because he had injured his shoulder but did not request to be off work on June 1, 2, 3 and 4.

Testimony of record indicates that the claimant called Ms. Barela, Chief Clerk to Division Engineer at Clovis, New Mexico, on June 7

to advise that he would be off work approximately three weeks. Ms. Barela testified that she told the claimant a doctor's statement would be required immediately. She further testified she received a Memorial Hospital Form 87 which stated the claimant was treated at the hospital on June 7 for an illness, and that the illness was a pain in the left buttock, and it would be three weeks before he could resume his duties.

Ms. Barela also testified that the doctor's statement did not cover the days of June 1 through June 4. She testified that she checked with the Hospital and discovered that the claimant was treated for that particular illness for the first time on June 7, 1982. She further checked the records and found that the last time the claimant had been treated prior to June 7, 1982 was in January of 1982.

The evidence establishes that the claimant was absent four days without proper authority, and such justifies serious discipline. In his testimony the claimant indicated he knew more than the hearing officer about the reason for his being out of service, but the evidence indicates that he may not have fully been aware of his responsibilities.

It is possible that the claimant believed he was obtaining an excuse from his foreman on May 28. This evidence is rather weak, and an employee who asks to be off for more than one day should be specific and spell out the time in days that he anticipates being unable to work. Just stating that he is going to be absent is insufficient; the employee must comply with the rules of the Carrier and obtain authority to be absent.

However, under the circumstances herein it is the opinion of the Board that permanent dismissal is too severe. The Board finds that the claimant should 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.


Preston J. Moore, Chairman


Organization Member


Carrier Member