

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 Southern Division Machine Operator B. R. Franklin from service was unjust.

2. That the Carrier now reinstate claimant with seniority, vacation, all benefits rights unimpaired and pay for all wage loss beginning August 27, 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 reporting to work approximately one hour and thirty minutes late and falsifying reports concerning the hours work and the work performed and also for using a weed mower for other than assigned duties off Company property during assigned working hours.

Pursuant to the investigation the claimant was found guilty of violating Rules 15, 16, 17 and 31B and was discharged therefor.

The claimant herein had been assigned to work in Cleveland, Texas in early July of 1982. On July 8, 1982 the claimant cut the grass on a vacant lot at Cleveland and the lot was approximately three to four acres in size. The claimant testified that he left work at 3:30 p.m. (Page 8 of Transcript).

The claimant further testified that on July 14, 1982 he arrived at work in Cleveland after 7:00 a.m. but did not remember how much after 7 o'clock. He testified that on that date he cut the grass between the tracks at the crossing at the west end over by the wood yard.

The claimant further testified that this grass was about the width of a room and one-half mile long, or perhaps only one-fourth mile long, and the width should have been about fifty feet. He testified

that he left work at 3:30 p.m. The claimant testified that he started work at the depot and went directly to the wood yard where he was working.

Special Agent B. R. Graves testified that on July 8 he observed the claimant arrive at work at 8:50 a.m. and that he did not use the Company mower for mowing but used it as transportation from shade to shade during the day and drove around in a residential area east and north of the depot at Cleveland quite extensively.

Special Agent Graves also testified that the claimant did utilize the grass sling in front of the depot and cut an area of grass approximately 8 feet wide and 16 feet long, and about 2:30 p.m. on the afternoon of July 8 he lowered the mower blade on the tractor and mowed one strip to a shade tree off Company property south of the depot where he sat on the tractor in the shade of that tree until approximately 3:00 p.m. when he mowed one strip back from the shade tree to the road.

Special Agent Graves further testified that on July 14 the claimant worked approximately two hours and thirty minutes actual work time, and on July 8 worked approximately thirty minutes actual time. He further testified that the claimant filed a wire at the end of the work day on July 8 stating that he had cut grass on the crossings and mowed a vacant lot, and he had observed the claimant on that date and he had not mowed the vacant lot.

The evidence does establish that the mower was stuck in low gear, but the testimony of record indicates that the claimant could have continued mowing grass.

Track Supervisor Waits testified that the claimant hardly cut any grass on all, and that on prior occasions employees had been able to cut the whole yard within a week. He further testified that there was grass yet to be mowed when the claimant left on July 17.

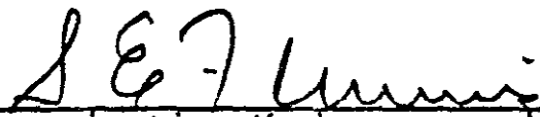
The Organization brought up the fact that the claimant was having to obtain his supplies at Silsbee, which is some distance away.

The evidence of record establishes that the claimant had been working and assigned to the Cleveland Yard for sixteen days.


The evidence was sufficient for the Carrier to make a finding that the claimant filed false reports concerning the work he was performing on the dates in question, and further the evidence is sufficient to establish that the claimant was not working. On that basis there is no justification for setting the discipline aside.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member

DATED AT CHICAGO, ILLINOIS
NOVEMBER 12, 1982


Carrier Member