

PUBLIC LAW BOARD NO. 1582

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: That the Carrier's decision to remove Southern Division Trackman G. Montemayor from service was unjust.

That the Carrier now reinstate claimant with seniority, vacation, all benefit rights unimpaired and pay for all wage loss beginning September 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 employed as a trackman and was assigned to Extra Gang 69 which was headquartered at Galveston, Texas with assigned working hours of 7:00 a.m. to 3:30 p.m. The claimant was charged with allegedly leaving work without proper authority at approximately 8:30 a.m. on July 9, 1982 and later reporting to his foreman that he had worked all day. An investigation was held, and pursuant to the investigation the claimant was discharged from the service of the Carrier.

The claimant testified that his regular assigned foreman, Williamson, was not around and that he advised the relieving foreman, R. D. Morgan, that he had stomach pains but would try to make it through the day and he got in the truck and proceeded to the third district where they got out of the truck and commenced walking toward Mile Posts 7 and 9.

He further testified that he and Charles Bryan and Johnny Cruz were the last ones to leave the truck and were walking toward Mile Post 8 or 9 when he began to feel worse, and he told Charles Bryan and Johnny Cruz that he was getting pains in his stomach and chest and requested them to notify the foreman that he was going to attempt to see a doctor.

The claimant then testified that he caught the train, got on the caboose and rode back to 59th Street to get his truck and try to see a doctor. He testified he drove home and attempted to get an appointment with the doctor but was unable to do so and took two Anacins and went to bed. He testified that he returned to work Monday morning, and foreman Williamson had returned to his regular assignment.

The claimant testified that he had some discussion with foreman Williamson and that Williamson asked if he had worked all day on Friday, and the claimant believed Williamson was harassing him, and he believed this was a stupid question so he gave the foreman a stupid answer.

The claimant testified that on July 14 Randy Beard came out and inquired about his leaving the job on Friday. The claimant testified that he told Randy Beard exactly what happened, and Randy Beard requested that he write out a statement, but he refused to do so until he was able to talk to his Union representative.

The claimant admitted that when foreman Williamson asked him if he had worked the entire day on Friday, he replied: "Yes, I worked all day," and when Williamson asked: "I hear you jumped the caboose," he replied: "I don't know what you're talking about . . . I ain't got no business jumping no caboose." The claimant further testified that Charles Bryan and Johnny Cruz told him they had informed foreman Morgan that the claimant was leaving on July 9.

The Organization points up that even if foreman Morgan had not been told, it would have been apparent to him that the claimant was not present and working. The Organization also introduced into evidence a statement from Dr. A. J. Jenkins, Jr., advising that the claimant had told him he had taken off work early on July 9 because he had stomach and chest pains.

Relief foreman Morgan testified that he missed the claimant during lunch and asked Johnny Cruz where the claimant was and he replied that the claimant had gotten sick and had gone home. Foreman Morgan also testified that the claimant had advised him that morning that he was sick but would try to make it through the day. The relief foreman also made a note in his pocket timebook that the claimant had left work early on July 9.

Foreman Williamson testified that he asked the claimant if he had worked the entire day on July 9, and the answer was "yes." He also testified that on July 12 he inquired of Johnny Cruz if the claimant worked all day on Friday, and he replied that he did not exactly know. Foreman Williamson testified that he asked the claimant two or three times if he had worked all day Friday, and also if he had caught the sulphur train on Friday, and the claimant replied no.

Roadmaster H. R. Beard testified that he questioned the claimant as to why he told foreman Williamson on Monday that he had worked all day on Friday, and the claimant responded that foreman Williamson was not there, and he thought he could get by with it and draw the pay. He further testified that the claimant had not mentioned harassment by foreman Williamson during this interview.

The Union points up that the claimant could not have know that the relief foreman did not fill in the proper time, and even if so, there was certainly no way the claimant could have drawn pay which he had not earned. The claimant testified that he did not have a conversation with roadmaster Beard wherein he admitted he thought he might get by with claiming pay for Friday, July 9.

The evidence is convincing that the claimant was ill on July 9 and advised his two fellow employees he was leaving to see a doctor. There is no evidence that the two employees advised the relief foreman prior to lunch time when the relief foreman asked Johnny Cruz regarding the whereabouts of the claimant, and Cruz advised the relief foreman the claimant had left because he was ill.

There is no evidence of harassment and no basis for the claimant to suspect the questions were harassment. Foreman Williamson was asking the questions, and it should have been apparent to the claimant that he was attempting to file the proper records for the employee.

The Board finds that under the circumstances permanent dismissal is to severe. Therefore, the Carrier is directed to reinstate the claimant 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

February 8, 1983
Chicago, Illinois