AWARD NO. 222
Case No. 251

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: Claim for reinstatement of former Albuquerque Division Trackman Julian Haley with seniority vacation, all benefit rights unimpaired and pay for wage loss beginning December 8, 1980 continuing forward and/or otherwise made whole, account the claimant being removed from service for being absent from duty without authority commencing November 21, 1980.

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 from duty without authority and was dismissed from the service of the Carrier.

The Organization contends that the claimant contacted the Division Engineer's Office on several occasions during his alleged absences and gained authority for these absences.

The carrier contends that the only date on which the claimant contacted the Division Engineer's Office was December 1, 1980 and that the claimant did not have authority to be absent. The Carrier points up that the claimant was instructed to report to work on November 20, 1980 and failed to do so.

Under date of December 8, 1980 the Carrier notified the claimant that he was being terminated for being absent from work without proper authority commencing November 21, 1980. This letter further stated that the claimant could, within twenty days from that date, request an investigation, and such request should be forwarded to the office of the superintendent by certified mail.

The Organization has alleged that the letter of understanding between the parties does not require that the request be made by certified mail and that such a requirement by the superintendent constituted harassment.

The Organization raised several other issues in support of claimant which were responded to by the Carrier. This response by the Carrier was extremely difficult to read, and the Board was unable to determine the Carrier's answer.

The claimant herein is not unaware of railroad practices and railroad requirements in performing his work schedule. The claimant worked for other railroads and should be aware of his obligation to perform service.

The evidence does indicate that the claimant called in and requested to be off on November 24, 25 and 26, and the Maintenance of Way Clerk evidently okayed this request with the admonition to be at work on December 1.

Under all the circumstances existing herein, it is the opinion of the Board that permanent dismissal is harsh, arbitrary and unjust. The Carrier is directed to reinstate the claimant with seniority and all other rights unimpaired, but without pay for time lost.

Perhaps it should be noted that the letter of understanding did not require the claimant to request an investigation by certified mail. This only assists the employee in establishing that such a request was made within twenty days. If the request is made by regular mail, the employee may not be able to prove that his request for an investigation was made within twenty days.

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

CHICAGO, ILLINOIS
FEBRUARY 17 1983