

PUBLIC LAW BOARD NO. 1532

PARTIES) 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 Northern Division Trackman L. G. Hayes and L. Jackson from service was unjust.
2. That the Carrier now reinstate claimants with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held December 23, 1982 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial evidence that proved that the claimants violated the rules enumerated in their decision, and even if claimants 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 claimants were charged with being involved in the theft of and the unauthorized cashing of Carrier's payroll check No. 809970 issued on August 31, 1982 belonging to J. C. Bedford on September 2, 1982, and the theft of another payroll check No. 809971 issued on the same date for A. R. Miles.

An investigation was held in the Division Engineer's Office in Fort Worth, Texas on December 28, 1982, and the claimants were dismissed from the service of the Carrier for violation of Rules 1, 14 and 16 of the General Rules for the Guidance of Employees, 2626 Standard.

The evidence of record indicates that claimant Jackson was present for the investigation and waived his right to have a Union representative of his choice. Claimant Hayes did not appear for the investigation. The record indicates that claimant Hayes was notified by certified letter of the date and location of the investigation. He was on a leave of absence beginning on November 15, 1982 to December 14, 1982 but did not contact the office of the Carrier after that date.

The evidence establishes that two checks were missing; one was cashed and payment had been stopped on the other before it was cashed.

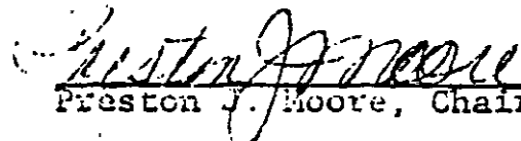
Claimant Jackson admitted that he signed a written statement which stated that claimant Hayes came by his home and wanted him to cash


a Santa Fe payroll check, and they went to a butcher shop on Mansfield Highway in Hayes car, and as they entered the store, Hayes gave him the check and he signed (Jackson) J. C. Bedford's name on the check and cashed it. He further stated that they left the store, and he gave the money to Hayes who then gave him \$100.00 for cashing the check.

The evidence of record indicates that claimant Hayes was arrested and confessed his part in the crime to Detective Bennie Rollo of the Forest Hills Police Department. Claimant Jackson also signed a statement as to his involvement. Detective Rollo testified that claimant Jackson admitted cashing the check, and he also voluntarily made a written statement concerning his activities in this regard.

The evidence is clear and convincing and establishes beyond a doubt that the claimants were well aware that they were perpetrating a crime, as well as violating the rules of the Carrier. There is no justification for setting the discipline aside.

AWARD: Claim denied.

  
Preston J. Moore, Chairman

  
Organization Member

  
Carrier Member

Dated February 28, 1983  
At Chicago, Illinois