

AWARD No. 262
Case No. 295

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 Trackman Flozell Clayton for reinstatement to service with seniority, vacation, all other rights unimpaired and pay for wage loss commencing August 27, 1982, continuing forward and/or otherwise made whole.

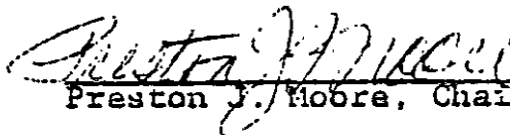
FINDINGS: This Public Law Board No. 1582 finds that the parties herein are Carrier and employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute, the claimant was discharged for violation of General Rules 16 and 17. The Organization contends that the claimant was unable to perform work inside the gondola car because his back condition was causing him excruciating pain and, if the claimant had complied with the order, it would have aggravated his spinal condition.

The Assistant Track Foreman testified that he told the claimant to go into the car and perform the work and that the claimant responded that he wasn't going to give up his rights on the ground. Superintendent Smith testified that the claimant was brought into his office and was asked why he refused to enter the gondola and unload ties as instructed by the Assistant Track Foreman and the claimant responded something about seniority and his rights. The Foreman testified that the claimant was instructed the third time to perform his work, and the claimant stated that he didn't know whether he would or not. The claimant testified that when he was instructed to get into the car he said, "I'm not getting in no car. I says I don't see no sense in me getting in the car, I'm giving up my rights to get up in the car, and you know I've got a bad back."

The evidence does not establish that the claimant has a "spinal condition," or a "bad back." There is no evidence that the performing of the work on the gondola car was unsafe or dangerous. Under those conditions, the claimant's conduct constitutes insubordination, and there is no justification for setting the discipline aside.

AWARD: Claim denied.



Preston J. Mobre, Chairman



Union Member



Carrier Member