

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: That the Carrier's decision to remove Los Angeles Division Trackman B. G. Sanders from service was unjust; That the Carrier now reinstate Claimant Sanders with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held September 11, 1984 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable 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 notified to attend a formal investigation in the Trainmaster's office at Needles, California, on August 14, 1984. He was charged with his alleged refusal to report for duty within the 15 days stipulated in the letter of May 30, 1984, and therefore being in violation of Rules 2, 13, 14, 15, and 16, General Rules for the Guidance of Employees, Form 2626 Standard.

The Division Engineer had received instructions from the General Manager's office in Los Angeles to contact the claimant and instruct him to return to work. The claimant returned to work May 21, 1984. He had not received the letter advising him of the terms of his being returned to work and was concerned about his seniority and pay for the time he was off work. For that reason, he did not return to work the following day nor thereafter.

By letter dated May 30, 1984, Superintendent D. D. Didier wrote the claimant advising him that he was instructed to report for duty within 15 days from the date of the letter. The claimant testified he did not comply with the letter for the reason that it still did not advise him of the terms under which he was being reinstated. When he did not report for duty, he was notified by letter dated June 28, 1984 that his seniority as a trackman with the company had been terminated, since he had been absent without proper authority commencing May 22, 1984.

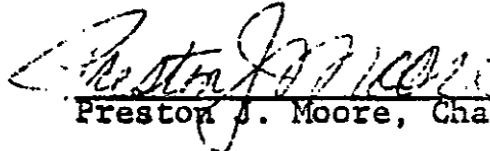
The Union suggests that the notice does not state that the claimant's

employment is being terminated, but simply his seniority. An experienced person should recognize that the terms are synonymous, however, it could be confusing to an employee. The claimant should have returned to work and complied with the letter. As long as he signed no restrictions and returned to work, all of his rights were protected.

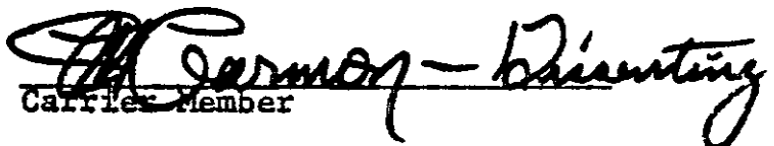
The claimant was absent without authority in excess of 20 days. The evidence indicates that it was not the intent of the employee to completely disregard the instructions of the Carrier. Evidently, he was confused and did not understand his rights. For that reason, and that reason only, the Board finds that permanent dismissal is too severe. 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

  
Union Member

  
Carrier Member