AWARD NO. 291
Case No. 326

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: That the Carrier's decision to disqualify Los Angeles Division Trackman J. Baca from his position was unjust; That the Carrier now lift the disqualification from Claimant Baca's record as a result of investigation held September 12, 1984, reinstate his seniority and pay the difference between the position of Foreman and position(s) worked beginning October 25, 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, disqualification as a foreman and assistant foreman 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 August 24, 1984 in Needles, California. The claimant was charged with his alleged failure to assure that Form U, Example 4 Train Order had been issued to all trains before beginning work on July 26, 1984; failure to place temporary slow and resume signs before starting work at Ibis, California on July 26, 1984; failure to review his performance as a foreman during July and August, 1984; and place his responsibility, if any, in connection with possible violation of Rules A, C, 10-A, 225, 752-B, 1063, and 1242 of Rules, Maintenance of Way and Structures, Form 1015 Standard. Pursuant to the investigation, the claimant was disqualified as foreman and assistant foreman for violation of all of those rules listed above.

On July 26, 1984, the claimant was the Foreman of Extra Gang 23. Extra Gang 23 was a switch-laying gang. On that date they were getting ready to put in a 24 cross-over. They were drilling the holes for guardrails and getting ready to put the frog in. The gang's assigned hours were 5:00 a.m. to 1:30 p.m. At approximately 6:00 a.m., while Extra Gang 23 was drilling the holes for the guardrails, 3825 East, Extra East, got through and almost ran into their drill.

At that time Roadmaster D. D. Jones testified that Extra Gang 23 had not acquired a Form U and did not have temporary slow boards up. He testified that 3825 East called Foreman Nez who was working in the same area, who authorized them to come by. He testified that Extra East had a 30-mile slow order, else they probably would

have hit Extra Gang 23. He testified that there was no Form U nor temporary slow or resume signs to protect Extra Gang 23. The Roadmaster further testified regarding several deficiencies of the claimant during the months of July and August.

K. A. Ewing, Track Supervisor, testified that track supervisors are required to give all foremen under their jurisdiction efficiency test reports monthly. He testified that all foremen are required to carry a copy of the time table in their possession and be familiar with the contents. He stated that the claimant did not know the correct number of his time table. The claimant did not have a line-up of the trains, did not know where the trains were approaching, and consequently could not efficiently or safely perform his work. He further testified that the claimant did not have his pocket time books or diary. He did not have his 2 and 2A's, which are an accounting of his work.

The claimant testified that he had worked for the Carrier for 11½ years. He stated that on the morning of July 26 he had gotten a copy of the train order from the Needles operator and assumed that Extra 3825 East had a train order protecting his gang. He conceded that the copy of his train order was not addressed to Extra 3825 East. He admitted that he did not place temporary slow and resume speed signs to cover their work location on that date. He admitted that he used Mile Post 691 instead of 591. He testified that he attempted to reach the dispatcher on the morning of July 26, but could not reach him.

After reviewing all of the testimony, the Board finds there is no justification for setting the motion aside.

AWARD: Claim denied.

Preston J. Moore
Preston J. Moore, Chairman

C. F. Fuss
Union Member

D. M. Gannon
Carrier Member

Dated at Chicago, Illinois
January 14, 1985