

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 in behalf of former Trackman T. Smith, Middle Division, for reinstatement to his former position with seniority, vacation and all other rights unimpaired and compensation for time lost beginning September 2, 1974, continuing forward to date he is returned to service.

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 injured in an off duty motorcycle accident. He failed to report for duty on July 19, 1974. There is a great deal of testimony in the record regarding whether claimant's wife called the roadmaster and advised him of the claimant's inability to work for several days.

It was evident that the claimant wished to return to work because he made quite an effort in this regard. He went to the location where the gang was working and advised the foreman that it would be several days before he would be physically able to perform his duties.

Upon recuperating, the claimant reported to the foreman, and the foreman referred him to the roadmaster, and the roadmaster referred him to the division engineer. After spending a week attempting to locate the division engineer, he was notified that he had been discharged from service.

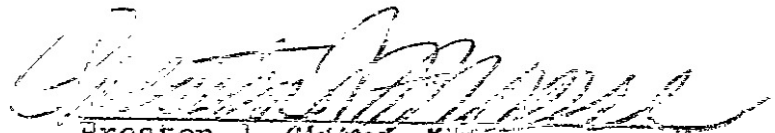
The Carrier was within its rights in holding the investigation for the notice had gone to the claimant's address listed with the Carrier. However, it is noted the claimant had moved and failed to list his new address with the Carrier. Thus he was not advised the investigation was to be held.

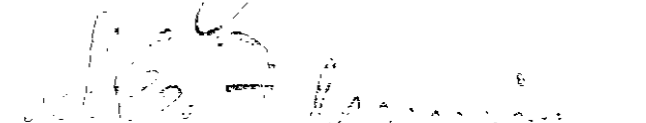
The Carrier was correct in this aspect of the decision. However, it is the opinion of the Board that the Carrier should have recognized that the claimant did make efforts to return to work and to mark off work. At the hearing, the Carrier should have granted some consideration to this fact.


It is the opinion of the Board that under the circumstances herein permanent dismissal is too severe. The claimant will be reinstated 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


Organization Member


Carrier/Member