

AWARD NO. 300
Case No. 330

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: Claim that former Machine Operator Moses Marshall, Los Angeles Terminal Division, be reinstated with seniority, vacation and all rights unimpaired and pay for all wage loss commencing November 17, 1983 continuing forward and/or otherwise made whole, as a result of his removal from service pursuant to formal investigation held October 14 and 21, 1983, for violations of Rules 2, 14, 16, and 31(b), General Rules for the Guidance of Employees.

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 charged with violation of Rules 2, 14, 16, and 31(b), General Rules for the Guidance of Employees, Form 2626 Standard, 1978. The investigation was held on October 14 and 21, 1983. The claimant was charged with being absent from duty without proper authority on August 25 and 26, and his allegedly furnishing an excuse slip from the San Bernardino Community Hospital that had been altered from its original statement.

The investigation was opened on October 14, but was postponed until October 21 on the basis that the claimant possibly did not receive the notice to attend the investigation.

All of the evidence has been reviewed, including Exhibit No. 1 which is the release to work and Exhibit No. 2 which is an occupational injury report. The Organization contends that the claimant was removed from service November 17 and the decision in the instant case was issued on the same date, advising the claimant that he was dismissed for allegedly altering the doctor's excuse slip. The Organization contends that the Carrier had no further jurisdiction or the authority to assess discipline. On that basis the Union urges that the investigation held on November 14 and 21 should be null and void.

The investigations were held on November 14 and 21. At that time the claimant was still in the employ of the Carrier. The decision may have been determined after the claimant had been terminated, but such decision could properly be made at that time. It should be noted that the Carrier should recognize that discipline should be issued promptly and that that is being stretched to its limits.

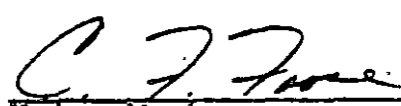
After reviewing all of the evidence, the Board finds that the Carrier had justification for reaching the decision which was made. If the claimant believed, in fact, that the testimony was incorrect, he could have requested a postponement and requested testimony from the individual in the doctor's office who presented him the excuse slip, if, in deed, it was not Krause.

Under the circumstances, there is no justification for setting the discipline aside.

AWARD: Claim denied.



Preston J. Moore, Chairman



Union Member



Carrier Member