

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: Claim that former Trackman Andrew Ashley, Albuquerque Division, be reinstated with seniority, vacation, all rights unimpaired and pay for all wage loss commencing January 5, 1984, continuing forward and/or otherwise made whole.

FINDING: 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 by letter dated January 5, 1984, that his seniority and employment with the Carrier had been terminated for his absence without authority commencing December 23, 1983, in excess of ten calendar days without formal leave of absence. The Carrier further notified the claimant in this letter that he could request a formal investigation, and the formal investigation requested by the claimant was held on January 20, 1984 at Winslow, Arizona.

The claimant testified that on Friday, the 23rd of December, he did not work because the foreman told him to go home. He testified that that day when he showed up for work the foreman sent him home because he "was hang over that day." He further testified that he called in on Monday, and did not report for work on Tuesday, December 27, because he was in jail. The claimant testified that he went to the "Medicine Man" on December 28, but did not report for work.

The evidence indicates that the last day the claimant actually worked was December 22. The claimant did not request a leave of absence. The Organization has cited several reasons why the decision should be overturned. All of those reasons have been taken into consideration.

There can be no doubt the claimant had a language problem. There was a barrier in communications and it was necessary for the translator to communicate with the claimant. Witness T. E. Williams was allowed to testify regarding a telephone conversation between the claimant and Track Supervisor Marostica. There is no evidence that Witness Williams was on the telephone and heard the conversation. In the absence of such evidence the testimony which she gave regarding the claimant's conversation with Track Supervisor Marostica should be disregarded.

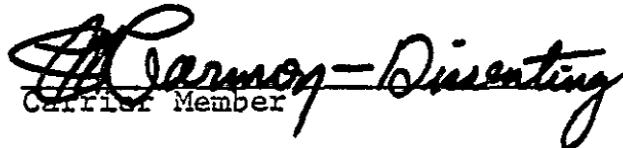
After reviewing all the evidence and all the circumstances involved, it is the opinion of the Board that permanent dismissal is unjustified under the circumstances. The Carrier is directed to reinstate the claimant with seniority and all other rights unimpaired but without pay for time lost.

AWARD: Claim sustained.

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 - Dissenting

Dated at Chicago, Illinois  
April 12, 1985