

PUBLIC LAW BOARD NO. 1582

PARTIES) Atchison, Topeka and Santa Fe Railway Company
TO)
DISPUTE) Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM: That the Carrier's decision to dismiss Mr. Gary L. Moore on June 15, 1984 was in violation of the Agreement, without just and sufficient cause and on the basis of unproven charges; The Carrier shall now be required to reinstate Mr. Gary L. Moore with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

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 employed as a trackman in 1974. By date of June 6, 1984 the Carrier notified the claimant to attend a formal investigation on June 15, 1984. The investigation was held as scheduled. The claimant appeared for the investigation and waived representation. The claimant was dismissed from the service of the Carrier for appropriating two five-gallon gas cans, one acetylene bottle and one oxygen bottle. On August 6, 1984 the Organization filed a claim for reinstatement of the claimant. That claim is now before the Board for determination.

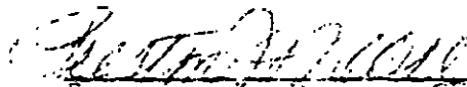
The Organization alleges that prior to the hearing the claimant was led to believe that the hearing was just a formality which in all probability would result in a suspension. A Special Agent for the Carrier testified that he was talking to the claimant regarding another incident when the claimant mentioned he had a gas can which belonged to the Carrier and when asked if he had anything else, he said he did and would be glad to take the Agent to his house and return anything he might have.

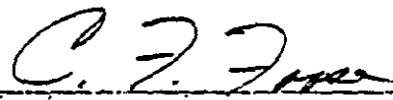
The claimant produced two five-gallon gas cans, an oxygen bottle and an acetylene bottle which he said he had been using but which belonged to the Carrier. The evidence establishes that the claimant voluntarily told the Special Agent that he had Carrier property. He was not being searched and apparently was not being questioned regarding possession of Carrier property.

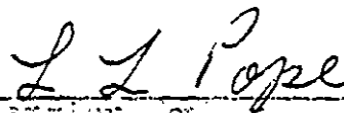
Under the circumstances, permanent dismissal is too severe. The Carrier is directed to reinstate the claimant with seniority and all other rights but without pay for time lost.

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

Dated at Chicago, Illinois
August 19, 1985