

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: That the Carrier's decision to remove Northern Division Trackman M. G. Simmons from service was unjust; That the Carrier now reinstate Trackman M. G. Simmons with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held August 13, 1985, 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, permanent removal from service 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 in Fort Worth, Texas, August 13, 1985, concerning his failure to protect his assignment on various dates between June 17 and August 8, 1985, and determine the responsibility, if any, involving possible violation of Rules 2, 4, 13, 14, 15, and 16, General Rules for the Guidance of Employees, Form 2626 Standard. Pursuant to the investigation, the claimant was found guilty of violating Rules 13, 14, 15, and 16, and was dismissed from the service of the Carrier. The Organization has filed a claim to this Board.

The transcript contains sixty-seven pages of testimony. Track Foreman P. M. Trinidad testified that he was the Track Foreman for Dallas Section 22 and that he supervised Section Gang 22. The foreman testified that he made a record of when the claimant was off. He testified that on July 22, the claimant left at 11:30 a.m. and returned at 1:00 p.m. On July 25 he worked until noon and was off for the rest of the day. On July 31 at 7:30 a.m. he went to the restroom and remained for thirty minutes. On the same date he went to the restroom at 10:00 a.m. and did not return until 11:00 a.m. On the same date he again departed at 2:00 p.m. and returned at 3:00 p.m. On August 1 he went to the restroom and returned after all the tools were in the pickup and worked until twelve o'clock noon. On August 2 he worked from 7:30 a.m. until 3:00 p.m. and left. On August 6 he worked four and one-half hours. On August 7 he worked four hours and again, it took him thirty minutes to go to the restroom.

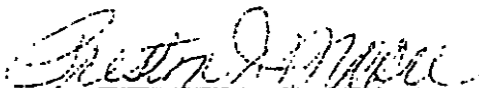
When the claimant returned, the foreman told him that he wanted him to do his share of the work, and he testified that claimant then began to curse him and called him all kinds of names, and that he didn't have to work. He testified that the claimant said: "Hit me, hit me," and that he left and went to the office.

He testified that the claimant did not give any reason for departing the worksite on any of the occasions. On one date he did ask for permission, but the foreman testified that he told him he needed him and that he did not have his permission to leave, but the claimant left anyway. The track foreman further testified that even when the claimant was on the job he did very little work.

After reviewing all of the evidence in this case the Board finds that the claimant was properly found guilty of the charges preferred against him. However, the discipline assessed is too severe. Therefore, the Carrier is directed to reinstate the claimant with seniority and all other rights unimpaired but without pay for time lost. Further since it is obvious that the "hard feelings" which exist between the claimant and the foreman in this particular case will not disappear, it is the Board's suggestion that the claimant be returned to service in another gang or section.

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
January 2, 1986