

PUBLIC LAW BOARD NO. 1582

PARTIES) ATCHISON TOPEKA & SANTA FE RAILWAY COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: That the Carrier's decision to remove Claimant M. E. Fry from service after investigation June 6, 1986 was unjust; That the Carrier now reinstate Claimant Fry with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held June 6, 1986, 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 at Fort Worth, Texas, concerning his alleged insubordination on April 30, 1986, at approximately 7:30 a.m. near East Dallas Yard in conversation with Mr. Crook and Mr. Gray, while working as trackman in Extra Gang No. 31. The investigation was postponed until June 6 upon the request of the claimant. The investigation was held at that time, and pursuant to the investigation the claimant was dismissed from the service of the Carrier. The claimant failed to attend the investigation.

Mr. R. C. Crook, Roadway Assistant at Amarillo, testified that he was in charge of Extra Gang 31 and that the claimant was working under his jurisdiction. He further testified the claimant was notified to attend the investigation. Mr. Crook testified the claimant reported to the worksite on April 30, 1986 at approximately 7:30 a.m. dressed in street shoes.

The Roadmaster instructed the claimant to put on his work boots or he would not be allowed to work. The claimant left and returned with his boots on.

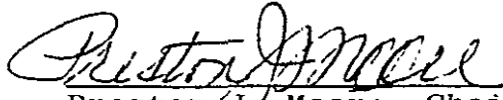
The Foreman told the claimant to go to the plate area of the gang and help with shoveling rock. The claimant then wandered aimlessly around the plating area for a few minutes, but made no effort to get a shovel or help with the work being done in the area. The Foreman went to the plating area, got a shovel, gave it to the claimant, and again instructed him to go to work.

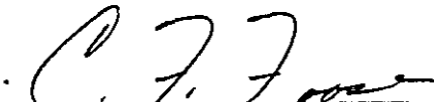
The claimant again walked away to get another shovel, declining the Foreman's offer. The claimant got his own shovel off the trailer. The Foreman asked for that shovel and reached to take it, but the claimant refused and pulled the shovel back. The Foreman again told the claimant to go to work and the claimant walked away, talking loudly to himself.

The claimant made some vulgar remarks and referred to the Foreman in an obscene manner.

Foreman Gray testified that the testimony of Mr. Crook was basically what occurred. After reviewing the transcript of record there is no justification to set the discipline aside.

AWARD: Claim denied.


Preston J. Moore, Chairman


Union Member


Company Member

Dated at Chicago, Illinois
September 19, 1986