

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Southern Division Machine Operator M. D. Surovik from service was unjust.
2. That the Carrier now reinstate Claimant Surovik with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held September 21, 1987 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 Temple, Texas on September 8, 1987 to develop the facts and place the responsibility, if any, concerning a report alleging that he failed to properly discharge his responsibilities regarding property and failure to promptly report an alleged injury which he claimed caused him to be absent from duty August 17 and continuing forward; failure to properly secure authority to be absent from August 17 through August 28, 1987; and failure to respond to telephone instructions of Assistant Division Engineer G. W. Beattie on August 18, 1987 at Alvin, Texas in possible violation of Rules A, B, D, E, 600, 604, 605, 607, 621, 671, 806 and 1040 Rules Maintenance of Way and Structures, Form 1015 Std., and Rules 13 and 30, Rules for the Guidance of Employees, Form 2626 Std. The investigation was postponed and heard on September 21, 1987.

G. W. Beattie, Assistant Division Engineer, Southern Division Headquartered at Houston, Texas, testified that he had written a statement concerning the matter under investigation on August 18, 1987. That statement was read into the record.

In this statement Mr. Beattie said that the claimant had explained to him and to J. M. Johnson that in early July he felt a pain in his back while throwing a switch at Hitchcock. He further stated that the claimant advised he reported it to the foreman, and he

did not wish medical treatment at the time. Mr. Beattie further stated that they asked the claimant if he wished treatment, and he responded that he did not and he thought the reason his back bothered him was due to tension and nerves. Mr. Beattie also stated that he believed the claimant was having a lot of problems at home.

In his statement Mr. Beattie also said that on Tuesday August 18 he talked to the claimant and advised him there were three options he knew of, which were as follows:

1. You hurt your back on duty, possibly while lining a switch at Hitchcock, which will require a Form 1420 and a visit with a doctor, or
2. You hurt your back while doing something off the job, in which case, we would need a statement accordingly, or
3. There was no incident at all.

Mr. Beattie further stated that at that time he asked the claimant if he had another idea that could be considered, and the claimant replied: "No!" He also stated that the claimant told him that he did not wish to turn in an injury because it would look back on his record, and the claimant further advised that the soreness in his back was related to the nerves and tension he had told him about earlier.

Mr. Beattie then stated that he advised the claimant that a decision needed to be made, and the claimant replied that he wanted to talk to the Union and then he would get back in touch. He stated that the claimant called back and said he would fill out a 1421 because he first felt the pain in his back when throwing the switch at Hitchcock.

Mr. Beattie further stated that he then told the claimant: "Listen very carefully; I'm going to give you some instructions to follow. First, you need to fill out a 1421 in Mr. Beard's presence. Second, you are to go with Mr. Beard to see a doctor."

Mr. Beattie stated that the claimant replied to these instructions: "I won't go to a doctor with Mr. Beard. He's not going to be in there when I see a doctor." Mr. Beattie stated that he then told the claimant: "I told Mike (claimant), listen to me carefully. I am giving you instructions which you are to follow. First, you are to fill out a 1421 form there with Mr. Beard. Second, you are to go with Mr. Beard to the doctor's office."

Mr. Beattie stated that the claimant then said that he wasn't working, and he didn't have to be there. Mr. Beattie stated that he told the claimant he was authorized to be off work, and he was to follow the instructions. Mr. Beattie stated that the claimant said: "I don't have to! You can't make me!"

Mr. Beattie testified that the claimant finally filled out the 1421 after he had attended a formal investigation concerning another absenteeism. He further testified that the claimant remained off duty from August 17 to August 28 without proper authority. He testified that he personally stated to the claimant that he was not authorized to be off on August 18. Mr. Beattie testified that the claimant was well aware of the proper procedures for duty-related personal injury incidents since he had had five previous personal injuries reported.

The claimant chose not to attend the investigation. The Union contends that the claimant had been terminated from the employment of the Carrier, and it was not incumbent upon him to attend. This position is correct. However, in the absence of his testimony, all of the testimony which was introduced has to be accepted. The evidence introduced by the Carrier is sufficient to establish that the Carrier had just cause to terminate the claimant.

AWARD: Claim denied.

Preston J. Moore

Preston J. Moore, Chairman

*Dated at Chicago, Illinois
February 5, 1988*

C. J. Jones

Union Member

L. Z. Pope

Carrier Member