

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 Middle Division Trackman R. Z. Pando from service was unjust.
2. That the Carrier now reinstate Claimant Pando with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 9:30 a.m. on November 10, 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 the 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 an investigation in Newton, Kansas on November 10, 1987 to determine all the facts and place his responsibility, if any, in connection with a possible violation of Rules 2, 3, 11, 15 and 16 of General Rules for the Guidance of Employees 1978, Form 2626 Standard, concerning his alleged failure to follow instructions contained in a letter dated July 8, 1987 from Medical Director Raja K. Khuri, M.D. and to satisfactorily pass required medical examination.

A formal investigation was held on November 10, and the claimant failed to appear. The evidence establishes that the claimant was properly notified of the investigation. The Union representative appeared and attempted to represent the claimant but had no authorization from the claimant to do so. Therefore, he was not permitted to represent the claimant.

R. M. Girrens, Assistant to Superintendent, presented a copy of a certified letter mailed from Medical Director Khuri to claimant. That letter stated: "Your recent physical examination and urine drug screen revealed the presence of marijuana which is an illegal drug. You are, therefore, medically disqualified from service and will remain disqualified until you provide a negative urine specimen."

That letter further advised the claimant of methods to provide a specimen and advised him that if he did not do so, the matter would be handled as a disciplinary problem. The evidence indicates that the claimant signed a certified receipt for the above letter on July 15, 1987.

The Carrier introduced another letter dated September 23, 1987 sent by certified mail from the Medical Director to the claimant. This letter stated that the claimant had been medically disqualified and was required to provide a clean urine specimen within ninety days. The letter advised the claimant that the deadline for so doing ends on October 13, 1987.

This letter of September 23 further advised the claimant that by October 13, 1987 the claimant must report to Dr. A. J. Wray's office in Wichita, and if he did not do so, the case would be handled as a disciplinary matter.

The evidence establishes that the claimant did not comply with the instructions as outlined in Dr. Khouri's letter of July 8, 1987. After reviewing the evidence and record, the Board finds there is no justification for setting the decision of the Carrier aside.

AWARD: Claim denied.

Preston J. Moore
Preston J. Moore, Chairman

C. F. Fouse
Union Member

L. I. Pope
Carrier Member

*Dated at Chicago, Illinois
February 5, 1988*