

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Arizona Division Track Supervisor L. U. Gallegos from service was unjust.
2. That the Carrier now reinstate Claimant Gallegos with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 9:00 a.m., February 21, 1989 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, 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 Winslow, Arizona on February 6, 1989 concerning the allegation that he was absent without proper authority on January 3 and January 5, 1989 while employed as a Track Supervisor on the Arizona Division and alleged rule violation of Rule 604, Rules Maintenance of Way and Structures, Form 1015 Standard.

The investigation was postponed and was then held on February 21, 1989. Pursuant to the investigation the claimant was assessed twenty demerits which resulted in an accumulation of sixty demerits. Therefore, on January 24 the claimant was notified by the Carrier that his employment was terminated.

The claimant testified he was responsible for the territory east of Winslow, from Mile Post 289 west of Winslow to Mile Post 233.5. He testified he had the responsibility of track supervisor to inspect the main line trackage on a daily basis to ensure the safe operation of trains.

The claimant testified that normally he reported for work between 6:30 and 7:00 a.m., but on the morning of January 3 he was sick and could not get out of bed. He testified he attempted to call the office but got a busy signal, tried another number and got no response but finally did get through at 7:41 a.m.

The claimant further testified that the Roadmaster Clerk answered the phone at 7:41 a.m. and advised him she would take care of it. He stated that he called the office again about 7:58 or 7:59 a.m. and was advised that the Roadmaster's Clerk had taken care of the matter.

The claimant also testified that he talked to Assistant Roadmaster Marino on January 4 and advised him that if he was not in by 7:30 a.m. on January 5, he would not be in.

The claimant then testified that about 8:40 or 8:45 a.m. he called and talked to Walt Smith, and Mr. Smith advised him he would let Roadmaster Reyes hand the matter when he returned.

The claimant introduced a telephone bill which established that he called the Carrier at 7:41 a.m. and 7:59 a.m. but presented no evidence that he attempted to call at 7:30 a.m. This statement also indicated that the claimant called Winslow at 8:46 a.m. on January 5.

W. N. Smith, Assistant Superintendent of Maintenance, testified that the claimant had stated he would report for work on the 5th and did not call in until quite a bit after 7:30 a.m. He also testified that the claimant did not call in before starting time on January 3.

Mr. Smith further testified that Paragraph of Rule 22(b) states that the employee must notify his supervisor on the first day, if possible, indicating as nearly as possible the number of days he expects to be absent.

S. L. Marino, Assistant Roadmaster, testified that he talked to the claimant on January 4, and he understood the claimant would be at work the following day, January 5. He explained that the claimant did not categorically state he would be back to work on January 5, but he understood that the claimant would be.

This witness further testified that he was in the office on the morning of January 5 from 7:00 a.m. until a little past 9:00 a.m. and was not called by the claimant. He also stated that the claimant did have some conversation with him in Spanish, but there was no misunderstanding since he was fluent in the use of the Spanish language.

The Board has reviewed the transcript of record which contains 24 pages of testimony, along with the exhibits submitted by both of the parties.

Under the rules the claimant has the responsibility to notify the Carrier before starting time that he was going to be absent. The claimant did not do so on January 5. However, the evidence does indicate there was some confusion existing between the claimant and Assistant Roadmaster Marino.

Because of the existing confusion, the claimant will be reinstated with seniority and all other rights unimpaired but without pay for time lost, with 45 demerits outstanding on his record.

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

*Dated at Chicago, Illinois
March 30, 1989*


Organization Member


Carrier Member