

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 New Mexico Division Trackmen D. R. Lopez, A. J. Ayala, L. Nunez and K. L. Rodriguez from service was unjust.
2. That the Carrier now reinstate Claimants Lopez, Ayala, Nunez, and Rodriguez with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 2:00 p.m. May 5, 1989 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved that the Claimants violated the rules enumerated in their decision, and even if the Claimants 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 claimants, D. R. Lopez, A. J. Ayala, L. Nunez and K. L. Rodriguez were notified to attend a formal investigation in Belen, New Mexico concerning a report that each had been absent from duty on Extra Gang 54 at Socorro, New Mexico without proper authority beginning April 20, 1988 and all subsequent dates; and to determine the facts and place the responsibility, if any, involving possible violation of Rule 1004, Safety and General Rules for all Employees, Form 2629 Std., effective April 1, 1988.

The investigation was postponed and held on May 5, 1989. Pursuant to the investigation the claimants were removed from service. The transcript contains 40 pages of testimony, all of which has been studied and considered by the Board.

Roadmaster T. C. Hernandez testified that the four claimants involved in this case were assigned to Extra Gang 31, and that gang was abolished effective quitting time on April 19, 1989. This witness stated that the claimants were notified to report to Gang 54 at Socorro, New Mexico.

Clerk Linda McWatters testified that she spoke to claimant Ayala several times and claimant Rodriguez once and requested the foreman

to tell claimant Lopez he had been force assigned to Gang 54. She also stated that a wire was put out on the 17th which was the previous week.

Clerk McWatters further testified that late Wednesday afternoon one of the claimants called her and said they had all conferred, and they did not have the money to remain, and they would have to go home. She stated she replied this would leave her four men short, and he said he was sorry, but they did not have the money to stay.

Claimant Lopez testified he was told to report to Gang 54 on April 20 in Socorro, New Mexico. He testified he talked to Ms. McWatters and advised her he would not be able to travel there by himself on the following Monday.

Claimant Trackman Nunez testified he was aware he was to report to Extra Gang 54 on April 20. He stated that he believed they were not force assigned to go but could have gone.

Claimant Trackman Rodriguez testified that he was notified by Ms. McWatters that he was to report the morning of the 20th on Gang 54 at Socorro.

Claimant Ayala testified he was notified of his new assignment by Ms. McWatters that he was to report to Extra Gang 54 in Socorro on the 20th. He stated he conveyed that information to the men riding with him. He testified he told Ms. McWatters the four of them could not be there because of a lack of funds.

The evidence establishes that claimants Nunez and Rodriguez have no discipline record. Claimant Ayala had 20 demerits which had been cancelled in his service with the Carrier. Claimant Lopez had only acquired 25 demerits during his service with the Carrier. All four claimants have been employed since 1979.

Under those circumstances and the facts involved herein, it is the opinion of the Board that discipline is not justified.

The Carrier is directed to reinstate the claimants with seniority and all other benefits unimpaired and with pay for all time lost.

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
Preston J. Moore, Chairman

C. F. Frost
Union Member

Kew Cotton
Carrier Member

Dated at Chicago June 19, 1939