PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM: Claim in behalf of former Trackman J. L. Nunez for reinstatement to his former position of trackman on the Valley Division with seniority, vacation and all other rights unimpaired and compensate him for wage loss beginning November 15, 1974, continuing forward to date that he is restored to service.

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 Organization contends the evidence does not support the charges and that claimant should be reinstated with seniority and all other rights unimpaired and with pay for time lost.

The claimant was charged with being absent from duty without authority in violation of Rule 16. The claimant was notified by certified mail of the investigation but failed to appear. As a result of the investigation the claimant was found responsible for violation of Rule 16 and was discharged from the service of the Carrier as of November 15, 1974. On December 10, 1974 the claimant filed a claim for reinstatement on the basis that the investigation was not promptly held within the time limits in accordance with the provisions of Article 5.

Being absent from duty is a continuing violation each and every day the employee is absent from duty. Claimant last worked June 24, 1974 and was absent thereafter. Therefore it is readily apparent there is no violation of Article 5. The Carrier gave the claimant ample opportunity to report back to work. The transcript of the investigation reveals there was a provision made for the claimant to request the reopening of the investigation in order to present his case and the claimant failed to do so. There is no evidence of record to support the claim.

AWARD: Claim denied.

Preston J. Moore, Chairman

Organization Member

B. J. East
Carrier Member