

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. Carrier's decision to remove former Kansas (Colorado) Division Trackman L. A. Gallegos from service, effective December 16, 1988, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Gallegos to service with his seniority rights unimpaired and compensate him for all wages lost from December 16, 1988.

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 La Junta, Colorado on December 12, 1988. The claimant was charged with being absent without proper authority on November 10 and November 11, 1988. Pursuant to the investigation, which had been postponed until December 16, 1988, the claimant was dismissed from the service of the Carrier.

Foreman A. P. Campos testified that he was a Relief Track Supervisor and the claimant was assigned to his gang on November 10 and 11, 1988. He stated the claimant did not work on either November 10 or 11, and he did not have permission to be absent on either date.

Foreman Campos testified that the claimant did not ask to be off on November 10 but did call in on November 11 at approximately 6:45 a.m. and asked to be off, but permission was refused. Mr. Campos further stated he did not give the claimant the day off on November 9 since he needed everybody and had worked alongside his men. He also stated he had had previous problems with the claimant.

The claimant testified he did not get permission from Foreman Campos to be off on November 10 because he was not at the hotel where he called.

The claimant testified he talked to the Roadmaster's clerk and then talked to Roadmaster Trimble and told him he was in the process of moving. The claimant stated that the following day at about 6:45 a.m. he called his foreman, and the foreman advised him he marked him AWOL. He stated he then asked the foreman if he could take off

Friday, and the foreman told him he could not since he was short of men. He testified that when he was refused the day off, he said he would be there in about two hours, and the Foreman said: "_____, No, just talk to Charrow."

The claimant testified he contacted Mr. Charrow who asked him if he had a personal day left, and when he responded that he did not and it was used up, Mr. Charrow told him to call Roadmaster Trimble. The claimant stated he did contact Roadmaster Trimble and advised him he would be absent that day, and Roadmaster Trimble told him to contact Foreman Campos.

Local Chairman Luginbill requested that Mr. Trimble, Mr. Gallegos and Mr. Campos be excused. The Chairman denied the request and allowed Mr. Campos to remain although Mr. Luginbill protested and stated he was going to recall Mr. Campos for further testimony.

The Board notes that such a response is in error. This, in effect, calls for the sequestering of witnesses. Although the Local Chairman and Vice Chairman did not use the proper term, it should have been clear to the Chairman that "the rule" had been called for, and such should have been granted. Foreman Campos was recalled and questioned by Mr. Luginbill.

The claimant herein was assessed 30 demerits which resulted in his accumulating 60 demerits which subjected him to discharge. The Board finds that under the circumstances herein the discipline assessed is harsh, arbitrary and unjust. The Carrier is directed to reinstate the claimant with seniority and all other rights unimpaired but without pay for time lost. Further, the claimant's demerits will be reduced to 45 demerits.

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. Foss

Union Member

*Dated at Chicago, Illinois
January 29, 1990*

L. L. Pope

Carrier Member