

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 Kansas Division Truck Driver V. A. Gomez from service was unjust.
2. That the Carrier now reinstate Claimant Gomez with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held March 1, 1990, 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 their 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 on February 16, 1990 in LaJunta, Colorado. The claimant was charged with leaving work without proper authority on January 20, 1990 in possible violation of Rules 1000, 1004 and 1007, Safety and General Rules for All Employees, Form 2629 Std. The investigation was postponed until March 1, 1990.

The claimant testified he worked approximately two and one-half hours of overtime on Friday evening, January 19 and was instructed he would have to work on Saturday, January 20. He testified the foreman had told him on Friday evening he would just work a few hours on Saturday. He stated he reported to work on January 20.

The claimant then testified that when he reported on Saturday, the foreman told him they would be working eight hours. The claimant stated he advised the foreman he would have to leave, and the foreman stated he would have to call Mr. Jones. He further testified they cleaned switches, some on the main line and some that were probably out of service.

The claimant admitted the foreman never did release him but kept telling him he would have to call "Jones." The claimant testified the foreman did not tell him "Yes, he could leave" or didn't tell him "No, he could not leave."

The claimant testified he left exactly at noon when they broke for lunch. He testified he told the foreman he had to leave, and the foreman said he would have to inform "Jones." The claimant stated he never spoke to Roadmaster Jones on Saturday but that he expected to talk to him to tell him about his problems.

The claimant further testified that normally he had given the foreman about a week's notice when he needed to be off work but in this instance he was unable to do so because he had not expected to work on Saturday.

Foreman Marquez testified that the claimant and another employee advised him they were going home, and he told them they were needed all day, and the claimant replied that this was stupid, it was not an emergency, and he advised the claimant it must be because they had been working on overtime. He also testified he stated to both men that if they left they would be insubordinate. He stated the other employee returned to work, but the claimant did not.

The Board has reviewed all the testimony of record and the evidence submitted by the parties. The claimant has a good record. Under the circumstances herein termination is too harsh, severe and arbitrary. Employees are not the ones to determine whether the work needs to be done or not, and therefore some discipline is justified. The Carrier is directed to reinstate the claimant with seniority and all other rights unimpaired but without pay for 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.

Dated at Chicago, Illinois

April 30, 1990

Preston J. Moore
Preston J. Moore, Chairman

C. F. Foss
Union Member

L. L. Pepl
Carrier Member