

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. That the Carrier's decision to remove Illinois Division Trackman P. A. Rangel from service was unjust.
2. That the Carrier now reinstate Trackman Rangel with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held February 26, 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 Carrier notified the claimant to attend an investigation in Kansas City, Kansas on February 14, 1990 in connection with possible violation of Rules A, 1004 and 1007, Safety and General Rules for All Employees, 1989, concerning his allegedly being absent from duty without proper authority since February 2, 1990 and withholding pertinent information in connection therewith.

The investigation was postponed at the request of the General Chairman and was held on February 26, 1990.

The claimant testified he was a trackman and machine operator and was working as a trackman on February 2, 1990 on the Olathe Section and his foreman was Leland Walters. The claimant stated he talked to his foreman on February 2 and reported sick, and the foreman gave him permission to be off on that date.

The claimant further testified he had not worked since February 1. The claimant stated he did not have permission to be absent from February 5 to the present date. He stated he could have been at work on February 7 and 8 but was told he had to see the supervisor before he came to work.

The claimant stated the reason he was absent on February 5, 6 and 7 was because he was in jail. The claimant testified they would

have let him out of jail to go to work on February 8, but that he remained in jail until the 14th of February when he was released. The claimant testified his wife had called every day to advise the Carrier that he could not report for work.

Carlene McCoy testified she was the Administrative Coordinator of Maintenance and on the morning of February 5 a friend of the claimant called requesting a change in vacation for the claimant and he was advised that the claimant could not receive a change in vacation time for the reason given, i.e., he was in jail.

Roadmaster Smutzer testified he made an investigation into the alleged absence of the claimant and determined that on Friday, February 2 the claimant called Foreman Leland Walters and had given no reason why he had to be off.

Roadmaster Smutzer also testified that he returned the call of Cindy Rangel and she advised him the claimant needed to be off work, and he was sick and would need a week of vacation. He stated he neither denied or granted the change in vacation.

This witness further testified that he then determined on February 6 the claimant was in jail and had been there since February 2. He testified that on February 8 the claimant called and said he had personal problems and would like three weeks of vacation. He testified the claimant's wife also called and wanted to know if the vacation had been granted.

Roadmaster Smutzer then testified that on February 8 he received a call at 3:40 p.m. from the Lyon County Sheriff's Department who wanted to know if the claimant had a meeting at the Division Office Building on February 9. He stated he checked and returned the call and advised the Sheriff's Office that the claimant did have such a meeting.

Roadmaster Smutzer further testified that he determined the claimant was incarcerated at 1:30 p.m. on February 2. He stated that neither the foreman or himself had granted the claimant permission to be off.

The Board has reviewed all of the testimony and evidence of record and finds that the discipline assessed is too severe. 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, 1940

Preston J. Moore
Preston J. Moore, Chairman

C. F. Foner
Union Member

L. L. Pope
Carrier Member