

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 California Division Trackman W. D. Graham from service effective August 15, 1989, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Graham to service with his seniority rights unimpaired and compensate him for all wages lost from August 15, 1989.

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 August 9, 1989 in San Bernardino, California. The claimant was charged with being AWOL on July 17, 18, 19, 20, 21, 24 and 28, 1989. The claimant was charged with possible violation of Rules A, B, 1000 and 1004, Safety and General Rules for All Employees, Form 2629 Std., April 1, 1988. Pursuant to the investigation claimant was found guilty and was dismissed from the service of the Carrier.

The Board has examined the testimony of record and the exhibits submitted by the parties.

Roadmaster D. S. Guillen testified he had instructed claimant that if he wished to be absent to call and receive permission to be off work before 10:30 a.m. or he would be considered AWOL. Claimant was instructed to call the Roadmaster's Office.

Mr. Guillen testified his office received a doctor's note on the 20th stating "Two days off." He testified the claimant had not called on July 19 or 20, and the note from the doctor's office was received in the afternoon of the 20th. He further testified that neither he nor his office received any call or any notice from the claimant regarding the dates in question.

David Gonzales testified he was the Extra Gang Foreman on Gang 75, San Bernardino. He stated he was the claimant's supervisor on the dates in question. He testified that the claimant did not contact him and request permission to be absent from duty on any of the dates in question. He testified he advised the claimant when he returned to work on July 25 that he was in trouble. He further stated he was available where the claimant could have reached him for permission to be off.

The claimant testified that on July 17, 18, 19, 20 and 21 he was in the hospital with a bleeding ulcer. The claimant testified he called other people and made attempts to call the Roadmaster's office and spoke to other people but could never talk to Mr. Guillen or Mr. Gonzales. The claimant testified he spoke to some individual in the Roadmaster's office by the name of Jim. Mr. Guillen testified there was no one working in his office by that name.

The claimant also testified he left a message with Clerk Kathy McKissack, who had referred him to Ernest Martin, who advised him he would leave a message for the Roadmaster.

Mr. Guillen also testified he did not receive a message regarding July 17 or a message that the claimant's ex-wife called on July 18. Mr. Guillen also stated he did not receive any message on July 24.

The claimant testified he was under medication, and he was not going to jeopardize his life by driving down to talk to his foreman. The claimant testified his brother-in-law took him to the hospital.

The claimant has a record of being absent without leave. In 1988 he received a 60 day suspension for being absent without proper authority; in 1989 he was disciplined for being absent without leave.

The claimant was well aware of the requirements regarding being absent from duty and under the circumstances there is no justification to set the discipline of the Carrier aside.

AWARD: Claim denied.

*Dated at Chicago, Illinois
June 5, 1990*

Preston J. Moore

Preston J. Moore, Chairman

C. J. Jones

Union Member

Lyle Z. Pope

Carrier Member