

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 California Division Foreman D. D. Jones from service, effective June 19, 1990, was unjust.
2. Accordingly, Carrier should be required to reinstate claimant Jones to service with his seniority rights unimpaired and compensate him for all wages lost from June 19, 1990 forward.

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 San Bernardino, California on June 19, 1990. The claimant was charged with being absent from duty on May 14 through May 18, 1990 without proper authority and failure to comply with the instructions from his Roadmaster on May 19, 1990 to determine the facts and place responsibility, if any, involving possible violation of Rules 1000 and 1004, Safety and General Rules For All Employees, October 29, 1989 and Rule 1050, Rules and Instructions for Maintenance of Way and Structures, October 29, 1989, Form 1015 Std.

Pursuant to the investigation the claimant was found guilty and was discharged from the service of the Carrier.

Roadmaster D. S. Guillen, and Relief Assistant Superintendent during the time in question, testified that the claimant was under his responsibility. He testified that on Monday, May 14 he received several phone calls that the claimant was not protecting the foreman's job at Victorville which he had been instructed to do on a relief basis.

Roadmaster Guillen further testified he determined the claimant had called Roadmaster Walker on Friday, May 11 and stated he was going to take an emergency vacation on account of his grandfather's death and he needed to transport his mother to Minnesota.

Roadmaster Guillen testified that Mr. Walker told the claimant he would relay the message, which he did on the morning of May 14. He also testified he discovered Mr. Walker did not give the claimant permission but simply advised he would relay the message to the Roadmaster.

Roadmaster Guillen further testified the claimant did not report to Victorville during the week of May 14 through May 18. He testified he contacted the claimant on May 21 on the mobile radio and instructed him to furnish documents to support his whereabouts for the week of May 14 through May 18, and the claimant stated he would do so.

Roadmaster Guillen then testified that on May 23 he had another conversation with the claimant and advised him he needed those documents, and the claimant told him he did not feel he needed to supply them. He stated the claimant acknowledged he understood the need for this documentation, and he advised the claimant he would give him until May 31 to furnish them. He further testified he had received no written documents until the time the investigation was held.

Mr. Guillen testified on cross-examination that during the week of May 14 the claimant did not contact him or his office which had an answering machine to record messages.

Max Burrell, Track Supervisor on the Cajon Subdivision, testified that he heard the conversation between the claimant and Roadmaster Guillen pertaining to instructions to bring some documents to support his whereabouts during that week and heard the claimant say O.K. He further testified he did not take the information he received from the claimant as an authorized absence.

Roadmaster Dave Walker testified the claimant called him advising him of the circumstances that he would be gone, but he stated he did not give the claimant permission to absent himself from duty but merely agreed to relay the information the claimant had given him. Mr. Walker confirmed he could have granted an emergency leave but did not do so.

Homer L. Davis, Roadmaster on the San Diego Subdivision, testified he was home all evening on Friday, May 11, and the claimant did not call. He stated he did not give the claimant permission to absent himself from duty.

The Carrier introduced a written statement by Larry Long, Assistant Roadmaster. This letter is not necessary for a determination of the facts in this case. The Union objected to this letter on the basis they did not have the right of cross examination. A written letter or a statement may be accepted, but the value thereof is recognized as not being the same as testimony where the other party has the right of cross-examination.

The claimant testified that on the week of May 14 he was on vacation. He stated he called Roadmaster Walker and told him he had an emergency and needed to take off. He stated he asked Mr. Walker to call Homer Davis and to put him on vacation, and he further asked Mr. Walker to call Mr. Guillen, who he thought was

the Roadmaster up in San Bernardino, and he said: "I will call them."

The claimant testified he was being singled out when requested to supply evidence as to where he was during the days in question, and he told Mr. Guillen that if he would give him a letter stating that every employee on the Santa Fe Railroad who had taken an emergency vacation had to prove where they were, then he would come up with the proof.

The claimant made a serious mistake when he went on vacation without anyone authorizing that vacation. According to his own testimony Mr. Walker did not authorize him to take his vacation, and the evidence establishes that no one else authorized his vacation.

Under the circumstances herein the Roadmaster had the authority and the right to require validation of the claimant's whereabouts during the days in question. Even if he did not have that right, and the claimant's position was correct, the employee is obligated to follow the instructions of a supervisor unless such endangers the safety of the employee or others.

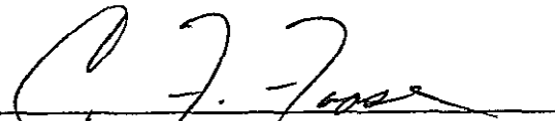
The claimant may have thought he was acting properly. For that reason, and that reason only, the Board finds the discipline assessed is too severe. The Carrier is directed to reinstate the claimant with seniority and all other rights unimpaired but without pay for time lost.

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.


Preston J. Moore, Chairman

Dated at Chicago, Illinois
November 21, 1990


Union Member


Carrier Member