

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 Albuquerque District Trackman Nelson Yazzie from service, effective February 26, 1991, was unjust.
2. Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from February 26, 1991.

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 a formal investigation in Belen, New Mexico on February 28, 1991 concerning his alleged absence without proper authority after being instructed to work on December 30 and 31, 1990 and January 1, 1991 and to determine the facts and place the responsibility, if any, involving possible violation of Rules 1004 and 1007 of the Safety and General Rules for All Employees, Form 2629 Standard. The investigation was postponed until February 26, 1991.

The Carrier introduced a return receipt on certified mail signed by Nelson Yazzie, but Mr. Yazzie did not appear for the investigation which was scheduled for 9:00 a.m. At 9:25 a.m. the hearing commenced. The claimant's representative protested the continuance of the investigation without the claimant being present.

The Union also objected that the hearing was filed off the claimant's seniority district. The Carrier noticed that the location was approximately 500 feet from the end of the seniority district.

Roadmaster P. A. Vaughn testified the claimant was working on the Kingman Section at the time of the incident.

Track Supervisor G. L. Rael testified that on the dates in question the claimant was assigned to the Lee Ranch Section at Grants, New Mexico. He testified that the claimant was instructed to work those days. He testified the claimant did not report for work or show up on Sunday, Monday and Tuesday. He further testified the claimant had never asked for permission to be off on those days.

- Foreman H. W. Brown testified the claimant worked for him on Saturday, the 29th, and although he had been instructed to work on the 30th, 31st and 1st of January, he did not do so. He testified the claimant did not attempt to contact him.

The Carrier cited Rule 1004 which states in part: "Employees must report for duty at the designated time and place. . . They must not absent themselves from duty . . . Employees must not be absent from duty without proper authority."

Pursuant to the investigation, the claimant was dismissed from the service of the Carrier.

The Board has examined the claimant's record which is very poor. The claimant had been dismissed on previous occasions. There is no justification to set the discharge aside.

AWARD: Claim denied.

*Dated at Schaumburg, Illinois  
July 22, 1991*

*Preston J. Moore*  
Preston J. Moore, Chairman

*C. F. Forder*  
Union Member

*L. Z. Pope*  
Carrier Member