

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 Southern Region Trackman E. Moore from service was unjust.
2. That the Carrier now reinstate Claimant Moore with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held June 10, 1991, continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial evidence that proved that the claimant violated the rules enumerated in their decision, and even if claimant violated the rules enumerated in their 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 in Houston, Texas on June 3, 1991 to determine his responsibility, if any, in connection with possible violation of Rules B, 1000, 1004 and 1007, Safety and General Rules for All Employees, Form 2629 Std., effective October 29, 1989, concerning his alleged absence without proper authority on May 5 and 6, 1991.

Pursuant to the investigation the claimant was found guilty of being absent without proper authority and was dismissed from the service of the Carrier.

The Union objected to the investigation being postponed without agreement, on the basis that it was in excess of the 30 day time limit.

Roadmaster J. E. Wagner testified that he went to Belleville, Texas where he talked with the claimant and his foreman, J. Lara. He stated Mr. Lara advised him that the claimant had not contacted him and that the claimant agreed he had tried to do so but was unable to reach him.

Roadmaster Wagner also testified he asked the claimant if he had attempted to reach him and told the claimant he had a recording device on his phone, and there should have been a message if he had called. The claimant advised Mr. Wagner he could not remember the number he had called.

The claimant presented a release from the Brenham Clinic Association on May 14 which covered the dates of May 5 and 6.

Rule 22(b) of the current agreement provides: "When an employee expects to be absent for ten days or less account of bona fide sickness or injury, he will notify his supervisor on the first day if possible indicating as nearly as possible the number of days he expects to be absent."

Foreman Lara testified he was home on the evenings of May 5 and 6, and the claimant did not contact him. The claimant testified he was in the hospital and tried unsuccessfully to reach his foreman. The claimant also testified he made no effort to contact Foreman Lara or Roadmaster Wagner at their homes on May 5 or 6.

The Board has studied all the testimony and the exhibits submitted by the parties. Under all the circumstances herein, permanent dismissal is too severe. The Board directs the Carrier to reinstate the claimant with seniority and all other rights 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 Schaumburg, Illinois
July 22, 1991*

Preston J. Moore
Preston J. Moore, Chairman

C. F. Foose
Union Member

L. Z. Pope
Carrier Member