

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 Western Region Trackman V. Ornelas from service, effective March 16, 1993, was unjust.
2. Accordingly, Carrier should be required to reinstate claimant Ornelas to service with his seniority rights unimpaired and compensate him for all wages lost from March 16, 1993.

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 by the Carrier that his seniority and employment were terminated account his being absent without authority beginning January 28, 1993 forward. The letter further notified the claimant he could request and investigation if he so desired.

The claimant requested the investigation which was held on March 16, 1993. The claimant had been suspended from service on February 3, 1993.

The Union contends that on February 12, 1993 the claimant requested the investigation to be held as soon as possible. The Union points up the Carrier set the investigation for March 12, 1993 in San Bernardino, California which was off the claimant's Seniority District and was 260 miles away. The Carrier then rescheduled the investigation for March 16, 1993 in Barstow, California, 39 days after the claimant was suspended.

The Union also contends that Rule 13 of the Agreement provides that the investigation will be held promptly.

The Union further objected to a continuance of the investigation due to the fact that the Chairman met with the Carrier's witness previous to the investigation. The Union contends that the Chairman and the witness had gone over the testimony of the witness and even furnished documents to be entered into the record.

On that basis the Union contends the due process and a fair and impartial investigation was not held since the Chairman knew which questions to ask and the answers he would get for the record. Also the Union contends that the Carrier called Roadmaster Crook, who had no first hand information, and allowed him to testify which was hearsay.

The Union notes the claimant testified that he tried to call several times and was finally told by Foreman Lopez: "We don't need you anymore." The Union also notes the claimant testified there was sickness in his family which had caused much of his absence.

The Union contends that if the claimant had violated the Carrier's rules, the discipline assessed is excessive.

By a certified letter dated February 4, 1993, the claimant was advised that his employment with the Santa Fe was terminated pursuant to the provisions of a Letter of Understanding dated July 13, 1976 for being absent without proper authority for more than five consecutive work days beginning January 28, 1993 forward.

This letter further advised the claimant that if he requested an investigation, such request must be made within 20 days from the date of the letter. The address to which the request was to be made was also a part of the letter.

The investigation was held on March 16, 1993. The claimant was charged with violating Rules B, 1000 and 1004 of the Safety and General Rules for All Employees, effective October 29, 1989. Pursuant to the investigation the claimant was found guilty of violating the above named rules. The claimant's termination remained in effect.

The evidence of record establishes that the claimant called in on January 28, 1993 and tried to reach Ron Crook and was advised that he should get hold of Moses Lopez who was his forman. The claimant testified that Mr. Lopez advised him that instead of meeting him at the gas station they needed him at the Section House because they had a job in town by Mojave.

The claimant further testified that it took him approximately 30 minutes to get there, and when he arrived, no one was present. The claimant stated he again phoned Ron Crook who told him to see if he could find Mr. Lopez. He stated he could not find Mr. Lopez.

The claimant's statement is a little confusing, but it appears the claimant went to the gas station instead of the Section House. Apparently after that he went to the Section House and phoned Mr. Crook again.

The claimant stated Mr. Crook told him he was supposed to meet him at the Section House, and he explained he knew that but took it for granted that Moses would meet him at the gas station since they were getting gas and he wanted to leave his van at the gas station because someone had broken his window out, and all his belongings were in the van.

The claimant testified that he attempted to go to Mohave but he was on a dirt road, and he got stuck in the mud. The claimant

testified that when he got his car out of the mud it was approximately noon, and he forgot what day it was, but he decided to bid for the Hanford.

The claimant conceded he did not work commencing January 28 nor did he work on January 29. He also stated he was not aware he had been awarded the bid for the Hanford position and did not report for work there on February 1 or February 12, 1993. The claimant stated he did not have the number to call to determine whether or not he had been awarded the bid.

The claimant notes that Roadmaster Crook entered testimony regarding a conversation he had with Foreman Lopez. This testimony is hearsay and not admissible unless Mr. Lopez testifies. Mr. Lopez did testify and confirmed the testimony. Consequently Roadmaster Crook's testimony is admissible even though it is hearsay.

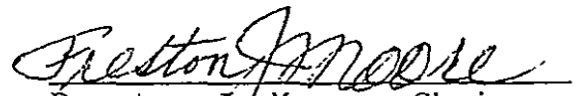
There is no evidence of improper conduct by Mr. Reilly who was conducting the investigation.

The evidence herein would normally justify termination. Claimant requested the investigation on February 12, and the investigation was set for March 5 but by agreement between the parties was postponed. Under these circumstances the referee finds there is no violation of the agreement.

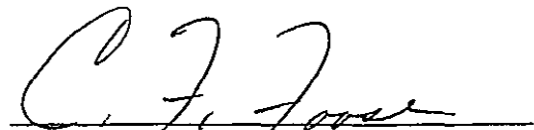
The claimant herein has been an employee for a short period of time and apparently was uncertain of all of his responsibilities and obligations. Under the special circumstances in this particular case, the Board finds that permanent discharge is too severe and directs the Carrier to reinstate the claimant 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 Schaumburg, Illinois
September 14, 1993*


Union Member


Carrier Member