

PUBLIC LAW BOARD NO. 1582

PARTIES) THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Claim is in behalf of Trackman J. L. Donaldson and Alvin Mitchell "for reinstatement to their former positions with vacation, seniority and all other rights unimpaired and payment for all wage loss beginning April 25, 1975."

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 claimants were charged with violating Rule 16 in that they were absent without proper authority.

Claimant Donaldson testified that he was assigned to work on March 21 and that he did not have permission to be absent and that he was absent. (See Page 4 of the Transcript) Claimant Donaldson had only been employed for approximately 18 months and had three previous violations of Rule 16. Under those circumstances the Board Finds no justification to overrule the decision of the Carrier.

Claimant Mitchell had been an employee for approximately one year and eight months and had five previous violations of Rule 16. Claimant Mitchell and the other three employees charged at the investigation were all notified by certified United States mail to attend the investigation. The other three employees testified they received the letter and did attend the investigation, but claimant Mitchell failed to appear or request a postponement.

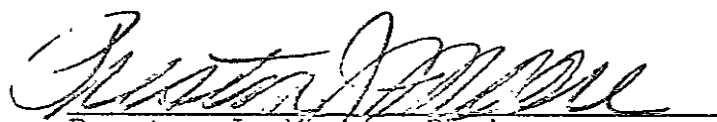
The Organization contends that the claimants were pre-judged and that the claimants herein were discriminated against inasmuch as the other two employees charged with violation of Rule 16 on the same date were reinstated on a leniency basis.

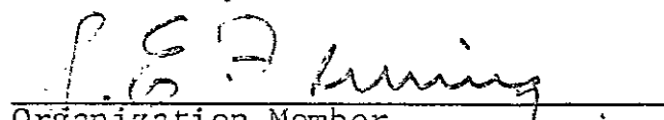
The Board has examined the transcript of record and the testimony and is unable to find any evidence of pre-judgment. There is substantial evidence of record which is more than adequate for the Carrier to reach a reasonable finding that the claimants were guilty as charged. Discrimination, as charged by the Organization, means that the Carrier has failed to treat employees on a comparable basis. Comparable basis means reasonably near the same amount of service and similar discipline records.

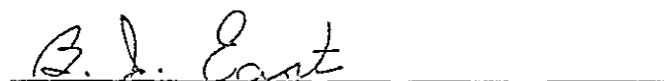
In this case the Carrier reviewed the discipline records of the two other employees who were discharged along with the two claimants herein and agreed to grant leniency to the other two employees inasmuch as their discipline records and tenure of service was not similar to those of the claimants herein. The issue herein is not actually discrimination but is equal application of discipline.

The Board has carefully examined the transcript of record and the testimony and finds no basis to overrule the decision of the Carrier.

AWARD: Claims denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member