AWARD NO. 520
Case No. 554

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 Central Region, Trackman Peter Grey from service was unjust.

2. That the Carrier now reinstate Claimant Grey with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 10:30 a.m. August 15, 1994 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.

3. That the Carrier violated the Agreement, particularly but not limited to, Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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 Carrier notified the claimant and the Union that an investigation would be held on August 5, 1994 at 2:00 p.m. in Clovis, New Mexico. The Union requested a postponement, and pursuant to that request the Carrier postponed the investigation to August 15, 1994. The claimant was notified of this postponement by certified mail.

The claimant did not appear for the investigation. The Union again requested a postponement which was denied by the Carrier. Phil Wolfersberger, Assistant General Chairman for the Brotherhood of Maintenance of Way Employees appeared.

The Hearing Official asked Mr. Wolfersberger if he had talked to the claimant, and he repleid that he had not talked to him but his office had. From that information the Carrier postponed the investigation until one hour after the scheduled starting time. At 11:04 a.m. the claimant still had not appeared, and the Carrier continued with the investigation.

The claimant was charged with violating Rules A, B, 1004, 1023, Safety and General Rules for All Employees, Form 2629 Standard, effective June 30, 1993, as supplemented or amended.

Track Supervisor Kent Gardner testified that on May 15, 1994 he was Assistant Roadmaster with the System Steel Gangs. He stated he knew the claimant who was assigned to Gang 2, 27002. Further he testified that on May 15, 1994 the claimant was absent from work and he hadnot seen or heard from the claimant again.

Assistant Foreman Lee Ben testified that he was the Timekeeper for Steel Gang No. 2, and he received information that on that date an employee apparently was passed out right beside the outfit cars, and that he was drinking all day. He testified he went to that location and did not find anyone, and when he walked through the outfit cars he saw the claimant lying in his bunk. He stated he tried to wake the claimant up but could not do so.

This witness further testified that he had not receiced a call from the claimant, and other officials from the railroad likewise had not received a call from the claimant. He also testified that phone numbers were given to all employees in order that they could call if they were going to be absent.

The Board has reviewed the entire transcript of record and finds there is no justification to set the termination of the claimant aside.

AWARD: Claim denied.

Dated at Schaumburg
October 19, 1994

Preston J. Moore, Chairman

Union Member

L L Pope
Carrier Member