

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 suspend Southern Region Trackman W. C. Waltman from service for 10 days was unjust.

2. That the Carrier now rescind their decision and pay for all wage loss as a result of investigation held 1:00 p.m., September 21, 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 their decision, suspension 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 claimant was notified to attend an investigation on September 22, 1994. Pursuant to a request from the General Chairman, the date was changed to September 21, 1994.

The claimant was charged with being absent from duty on August 22, 23 and 25, 1994, and such constituted a violation of Rules B and 1004, Safety and General Rules for All Employees, effective June 30, 1993.

Pursuant to the investigation the claimant was found guilty and was assessed a ten day suspension.

The Board has reviewed the testimony of record and finds that both the Roadmaster and the claimant's Foreman testified that the claimant's absence on August 22 was excused, and he was not AWOL on that date. The claimant did report to work on August 24, but the evidence of record establishes that he did not call in on the 23rd or 25th and was AWOL on those dates.

The claimant testified that he did not have permission to be absent from duty on August 23 or 25 because of sickness but on

August 24 he did report for work. The claimant also testified he did not inform his Foreman or his Roadmaster that he would be absent from duty on either August 23 or 25, 1994.

Under these circumstances there is no question but that claimant was in violation as found by the Carrier. However, the officer who established the discipline of a ten day suspension found that he was absent also on August 22. Such was not the case.

It is impossible to determine whether or not the Carrier would have assessed the same discipline for two days of absence under the circumstances herein. On that basis the Board finds that the ten day discipline should be reduced to a six day suspension. The Carrier is directed to pay the claimant for the four days of the suspension which he served.

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  
November 10, 1994*

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

*C. J. Jones*  
Union Member

*L. L. Pope*  
Carrier Member