

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 Eastern, Daniel D. Eye from service was unjust.
2. That the Carrier now reinstate Claimant Eye with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held 10:00 a.m. on August 28, 1995 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible 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 claimant was notified to attend a formal investigation on August 28, 1995 concerning his being absent without proper authority for more than five consecutive work days beginning July 10, 1995.

The investigation was opened as scheduled. However, the claimant did not appear, and the Union requested that the investigation be postponed another day. The Carrier refused this request but did recess for fifteen minutes. When the claimant still had not appeared, the investigation recommenced at 10:25 a.m.

Pursuant to the investigation the claimant was issued a Level 6 dismissal from employment for violation of Rules 1.13 and 1.15 of the Safety and General Rules for All Employees, Form 2629 Std., effective September 30, 1994.

The claimant had acknowledged receipt of the Notice of the proposed investigation and requested an investigation under the rules. The claimant wrote a letter that he had been laid off

from the Signal Department and was working in Track for relief until he was recalled to Signal.

Jeffrey J. Craigg, the claimant's Foreman, testified the claimant worked on his Extra Gang No. 71 and did not report for work July 10 through July 17. He also testified the claimant knew his phone number but failed to call him regarding the absence. He further testified that as far as he knew the claimant was not in a temporary position.

Foreman Craigg testified that he called the clerk regarding the claimant, and she stated the claimant was on his gang. He also testified there were vacant positions on his gang, and two employees were recalled. He stated the vacancies had been advertised for two weeks, and no one was bidding on them.

A letter from B. D. Henry, Director System Support for the Santa Fe, was introduced into evidence. That letter was addressed to the claimant and advised him that he was recalled to service as a Trackman effective July 10, 1995 in the Maintenance of Way Department on Eastern Region, Seniority District No. 2 in accordance with Rule 4 of the Maintenance of Way Agreement. Rule 4(c) of the Maintenance of Way Agreement states:

"Failing to report to service when recalled. Employees failing to report to work when called without having satisfactory reason for not doing so will forfeit seniority in the class where recalled as provided in Rule 2(c).

The Union contends that under Section 4(c) employees recalled to work had fifteen days under the current Agreement to report for duty after being recalled from a furloughed status. Therefore, the Union contends the claimant was not required to report to work until July 25, 1995.

Foreman Craigg also testified that on Friday, July 10 he had directed the claimant to return to work on that day.

The letter to the claimant dated June 23, 1995 must have been confusing to him. Obviously there was a mistake, or at least a misunderstanding, by the claimant.

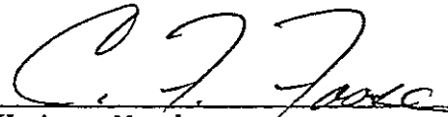
The Board finds that the claimant loses his seniority under the Maintenance of Way Agreement and should be reinstated to his previous status with his seniority in the Signal Department effective this date.

AWARD: Claim disposed of as per above.

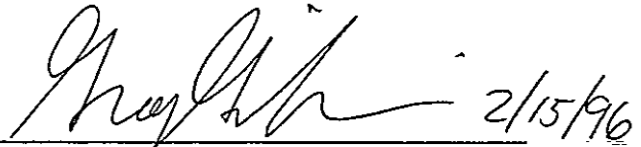
ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.



Preston J. Moore, Chairman



Union Member



Carrier Member.