AWARD NO. 87
Case No. 102

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: Claim in behalf of J. L. Smith for reinstatement to his former position as Trackman on the Middle Division with seniority, vacation and all other rights unimpaired and compensation for any wage loss he may have as a result of his removal from service on September 12, 1977.

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 sustained an injury to the ring finger of his right hand while performing service on the extra gang. As a result of the injury the claimant had to have the finger amputated one-fourth inch from the tip. Surgery was performed on July 7, 1977.

On July 8, 1977 the roadmaster visited with the claimant and inquired as to how he was doing and how long he would be off work. Claimant visited with the doctor July 8, 1977, and the doctor advised him he would be off work for at least two weeks and it might be as long as six weeks before he could resume his normal duties. The claimant called the roadmaster and advised him what the doctor had reported. The roadmaster advised the claimant not to worry and to come back to work when he could.

Approximately two weeks later the claimant reported to the doctor's office and found the safety supervisor present, and the safety supervisor inquired of the doctor if the claimant was able to return to duty. The doctor replied there was considerable drainage and that he wasn't sure when the claimant could return to work.

The claimant remained off work with his injury because he stated that there was considerable drainage and soreness from his finger. The claimant again visited the doctor and thereafter on August 18, 1977 reported to his position as a trackman at Oklahoma City, Oklahoma but was advised that he could not return to work.

A formal investigation was finally held on September 12, 1977. The Assistant General Chairman was present at the direction of the General Chairman to represent the claimant but was refused admission on the basis that the Carrier had no notice that the claimant desired such representation.

The claimant did not appear for the investigation and contends that he did not receive the notice to attend the investigation until September 19, 1977.

There is much that could be said about the handling of this case. After a careful consideration of all the facts and circumstances, it is apparent that there is fault on both sides. The claimant failed to obtain a leave of absence, Form 1516. At the same time it is recognized that the Carrier knew the reason why the claimant was absent, and it is the opinion of the Board that the discipline assessed herein is harsh, arbitrary and unjust.

Any discipline in excess of six months is too severe, and it is the finding of the Board that the claimant should be reinstated with seniority and all other rights unimpaired and be paid for time lost commencing six months from August 18, 1977. It is recognized that the claimant was discharged on September 12, 1977. However, he attempted to report for work on August 18, 1977, and therefore it is the opinion of the Board that the six months should commence running as of that time.

AWARD: Claim sustained as per above.

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

Preston J. Moore, Chairman

Organization Member

Carrier Member

Dated November 27, 1978