

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: Five claims in behalf of former painter Leon Jackson.

Claim No. 1. Removal of 20 demerits assessed claimant's personal record as result of formal investigation held December 7, 1977; claim covered by Carrier's file 11-680-130-3 and Organization's file 1-D-19-4.

Claim No. 2. Removal of 20 demerits assessed claimant's personal record as result of formal investigation held at 9:00 a.m., December 28, 1977; claim covered by Carrier's file 11-680-130-8 and Organization's file 1-D-27-4.

Claim No. 3. Removal of 30 demerits assessed claimant's personal record as result of formal investigation held at 2:00 p.m., December 28, 1977; claim covered by Carrier's file 11-680-130-9 and Organization's file 1-D-26-4.

Claim No. 4. Claim for reinstatement with pay for time lost as a result of claimant's removal from service pursuant to formal investigation held January 25, 1978; claim covered by Carrier's file 11-680-120-158 and Organization's file 1-R-70-4.

Claim No. 5. Claim for reinstatement with pay for time lost as a result of claimant's removal from service pursuant to formal investigation held September 14, 1978; claim covered by Carrier's file 11-680-120-162 and Organization's file 1-R-74-4.

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 Organization has filed five claims in behalf of the claimant, three of them for removal of demerits and the other two for reinstatement with pay for time lost.

Claim No. 1 concerns an investigation held December 7, 1977 wherein the claimant was charged with indifference to duty and a discourteous attitude toward his fellow employees. Evidence indicates that the claimant was singing and whistling loudly and creating a general distraction in the office area. Evidence further indicates that claimant was distracting other employees and would not cease when requested to do so. There is no basis for setting aside this discipline.

However, the demerits assessed in Claims No. 2 and 3 must be removed for the reason that the superintendent failed to timely decline those two claims.

Claim No. 4 involves the request for reinstatement of the claimant with pay for time lost as the result of the claimant being removed from service because of an investigation held January 25, 1978. The Carrier contends that this claim was filed June 20, 1978 and therefore was not filed within sixty days from the date of the occurrence on which it is based, as required by Article 6, Section 1(a) of the Maintenance of Way agreement.

The record establishes that the claimant was removed from service on February 16, 1978, and was so notified by Certified Letter No. 188667 on that same date. Under these circumstances, Claimant should have notified his union representative of the decision and indicated whether or not he desired that the matter be pursued further. Apparently, this was not done immediately, as the claim was not filed until June 20, 1978 or 124 days later. The claim was not filed within sixty days of the occurrence as required by Article 6. However, a discharge is not a continuing claim. A continuing claim is a type of claim which occurs daily or with certain frequency.

The Carrier's position that it has the right under Article 5, Section 7(a) to reinstate individuals without the Organization's concurrence within one year from the date of dismissal is correct provided that such reinstatement does not contain any conditional clauses or any statement which might prohibit the claimant from progressing a claim for time lost.

The evidence might well justify dismissal under Claim No. 4 on the basis that the claim was not provided within the time limits. However, in view of the fact that the dismissal is not justified when the 50 demerits were removed from the claimant's record, Claim No. 5 is moot and it is the finding of the Board that the claimant should be paid forty (40) days pay and reinstated with seniority and all other rights unimpaired and with twenty demerits remaining on his record.

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.

Preston J. Moore, Chairman

SE7 Leming
Organization Member

B. J. East
Carrier Member