

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 Maintenance Welder Helper Lonnie Savage, Centralized Rail Welding Plant, Amarillo, Texas, for pay for time lost for period commencing January 24, 1978 until returned to service.

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 employed as a welder helper at Amarillo, Texas until he was removed from service pursuant to an investigation held February 6, 1978. The claimant was charged with violating Rules 16 and 17 of the General Rules for the Guidance of Employees.

The Organization contends that the claimant was wrongfully discharged for the reason that the claimant was not advised why he was being dismissed, nor did the Carrier indicate to the claimant that he was being removed pending a formal investigation.

The Organization contends that the claimant did not receive a fair and impartial investigation and that the claimant was prejudged. The Organization also contends that a co-worker of the claimant was a necessary witness and that the failure of the Carrier to call this employee as a witness prejudiced the claimant's rights.

By letter dated June 24, 1978 the Carrier offered to reinstate the claimant and allow the Organization to pursue the claim for time lost to this Board. The claimant reported for work. However, the superintendent refused to talk to the claimant until he withdrew a complaint previously submitted to the Equal Employment Opportunity Commission.

On August 16, 1978 the claimant received correspondence from the superintendent of the Centralized Welding Plant advising him to report for duty. The claimant reported for duty after he had withdrawn his EEOC complaint.

The Carrier contends that its financial responsibilities ceased as of the offer of reinstatement of June 24, 1978. Ordinarily this would be true, because the letter of June 24 offered reinstatement and allowed the Organization to pursue the claim for time lost to a Public Law Board. However, the superintendent of the Carrier violated


the terms of the agreement by making a conditional reinstatement which was not justified and not under the terms of the letter of June 24, 1978. Therefore, it is the opinion of the Board that the Carrier's liability, if any, continued until the date the claimant was reinstated to service.


The Board has examined the entire transcript of record and the evidence of all witnesses. The testimony is sufficient to make a finding that the claimant was guilty, in spite of the fact that the evidence indicates the superintendent may have a problem with employee relations.

Under the circumstances herein the Board finds that J. J. Flores was not a necessary witness to the determination of the facts involved herein. Therefore, it is the finding of the Board that the evidence is clear and convincing that the claimant was guilty as charged and under the circumstances herein there is no justification to overrule the decision of the Carrier.

AWARD: Claim denied.

  
Preston J. Moore, Chairman

  
Organization Member

  
Carrier Member