

PUBLIC LAW BOARD NO. 3308

Award No. 5
Case No. 5

PARTIES Brotherhood of Maintenance of Way Employees
 TO
DISPUTE The Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

"Claim that former Southern Division Trackman J. C. Dake be reinstated to service with seniority, vacation, all benefit rights and paid for wage loss and/or otherwise made whole, account unjustly removed from service for being absent without proper authority."

FINDINGS Upon the whole record, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, who had been absent without proper authority in excess of ten days was notified by letter dated October 2, 1981, that:

"It has been brought to my attention by your supervision that you have been absent without proper authority in excess of ten (10) days.

In accordance with letter of understanding of July 13, 1976, which became effective October 1, 1976, this is to notify you that effective immediately your seniority and employment with the AT&SF Railroad is hereby terminated due to your being absent without proper authority.

This is to also notify you that in accordance with Rule 13 of the current Agreement, if you so desire, within 20 days of the date of this notice you may request that you be given a formal investigation."

Claimant was also requested to acknowledge receipt on attached copy of the letter, which he did.

The Organization maintains that when Claimant acknowledged

receipt of the letter it served as a request for a formal investigation. The organization further alleges that since Carrier did not provide Claimant an investigation he was not accorded due process.

We have carefully reviewed the entire record in detail, but we find no probative evidence to show that Claimant complied with the provisions of Letter of Understanding dated July 13, 1976. When Claimant acknowledged receipt of letter addressed to him, dated October 2, 1981, he merely acknowledged receipt of said letter and the contents therein. The Claimant could have requested, if he so desired, that he be given an investigation within 20 days of October 2, 1981. This, he did not do. It was Claimant's sole responsibility to request a formal investigation and by not doing so admitted that he had been absent without proper authority in excess of 10 days and thereby relinquished his seniority under the provisions of the July 13, 1976 Letter of Understanding. We are left no alternative other than to apply the Rule as written and find that Claimant forfeited his seniority and employment and Carrier did not violate the Agreement.

AWARD Claim denied.

Clarence H. Herrington
Clarence H. Herrington
Neutral Member

AM Cannon
Carrier member

J E Fleming
Organization Member

Dated at Chicago
February 22, 1983