

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. Carrier's decision to remove former Illinois Division Welder G. L. Davis from service, effective June 22, 1989, was unjust.

2. Accordingly, Carrier should be required to reinstate Claimant Davis to service with his seniority rights unimpaired and compensate him for all wages lost from June 22, 1989.

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 an investigation in Kansas City, Kansas on June 22, 1989 to develop the facts and place responsibility, if any, in connection with possible violation of Rules B, C, 1000, 1020 and 1026 of Safety and General Rules for Employees, 1988, Form 2629 Std, concerning his alleged failure to comply with written instructions from System Medical Director dated February 6, 1989.

Pursuant to the investigation the claimant was found guilty of the charges and was dismissed from the service of the Carrier.

Carlene McCoy, Administrative Coordinator, Maintenance, in the Division Manager's Office at Kansas City, testified that she handles leaves of absence for maintenance employees, such as the claimant herein.

Ms. McCoy testified that according to her records the claimant was placed on leave of absence per Dr. Khuri as a result of his being medically disqualified and being withheld from service on a medical leave of absence until return to duty as approved by the Medical Director.

Ms. McCoy testified that the claimant was placed on leave of absence September 8, 1988, and her office was advised that the claimant was physically able to return to work, and he did not do so on November 21, 1988.

Ms. McCoy then testified that on January 13, 1989 Dr. Khuri sent a certified letter, return receipt requested to the claimant which stated:

"If your test shows no evidence of drugs, my office will not initiate any correspondence to you. However, if the test is positive, you will be medically disqualified from service and cannot return to work until you (a) provide a negative urine specimen, and (b) contact the Employee Assistance Counselor in your area to obtain an evaluation and clearance.

Failure to provide a supervised urine specimen within five calendar days of receipt of this letter will result in your medical disqualification from service."

Ms. McCoy stated that the records indicated the claimant signed for receipt of that letter on January 20, 1989. She stated she next received a letter from Dr. Khuri which stated the claimant was medically disqualified and should be withdrawn from service on a medical leave of absence until the return to duty was approved by the Medical Director.

Ms. McCoy testified another letter was sent to the claimant dated August 29, 1988 stating that on November 14, 1988 the claimant provided a drug free urine specimen and was returned to service. However, the claimant gave another urine sample for drug screening on February 9, 1989 which tested positive for the illegal drug of marijuana and he remained medically disqualified from service and was instructed that within 90 days of receipt of the letter he was to accomplish the following:

1. Provide a supervised urine specimen free of all illegal drugs to Dr. Michael Crist . . . .
2. Obtain an evaluation and clearance to return to work from Mr. Michael Johnson, the Santa Fe Employee Assistance Counselor in his area.

Ms. McCoy stated that the claimant was advised that failure to follow those instructions and accomplish both requirements within 90 days of receipt of the letter would result in Dr. Khuri informing the General and Division Managers about the result of his test, and he would then be subject to discipline. Ms. McCoy testified that the records indicate the claimant signed for receipt of the letter on February 21, 1989.

Ms. McCoy testified the next correspondence was a letter dated April 26, 1989 which again advised the claimant what was required of him, and if he failed to follow those instructions, he might be subject to discipline. She stated the claimant signed for receipt of that letter on April 29, 1989.

The claimant did not attend the investigation. Copies of the letters referred to were introduced into evidence. The evidence of record indicates the claimant either does not care for his job or he is more interested in marijuana than he is in his job.

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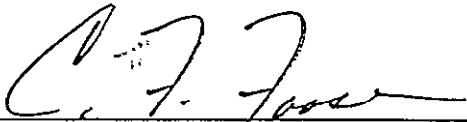
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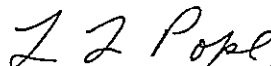
Under the circumstances herein, there is no justification to set the discipline aside.

AWARD: Claim denied.

  
Preston J. Moore, Chairman

  
Union Member

Dated at Chicago, Illinois  
January 29, 1990

  
Carrier Member