

PUBLIC LAW BOARD NO. 2774

Award No. 113

Case No. 113

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the current agreement when it dismissed Welder Helper W. T. Washington, without first according claimant a fair and impartial hearing. Said action being unjust and in abuse of discretion.
2. That claimant now be restored to his former position with the Carrier with seniority and all other rights restored unimpaired and that he be compensated for all wage loss suffered and that the charges be stricken from his personal record."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees 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.

The record indicates that claimant was charged with three offenses: with absenting himself from duty without proper authority at about 1:30 P.M. on February 25, 1982; secondly, for fraudulently alleging an on-duty injury on February 24, 1982; and, finally, for his failure to promptly report to his immediate supervisor the alleged injury which supposedly occurred on February 24. Subsequently an investigation was held on May 18, 1982 and thereafter claimant was adjudged guilty by Carrier and removed from service. This latter action was accomplished by letter dated June 11, 1982.

The primary thrust of petitioner's complaint in this matter is that claimant was not accorded a fair and impartial hearing and, hence, was unjustly dismissed. Carrier denied that the hearing officer in any way prejudiced claimant's position in the conduct of the hearing.

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Claimant represented himself at the investigative hearing. This made even more difficult the hearing officer's role since it is clear from both the rules and practice in this industry that the hearing officer conduct the hearing in as fair and impartial manner as possible, making every effort to produce all the evidence necessary for an objective assessment of the guilt or innocence of the charged employee. Particularly since an investigation is not a court of law, it is necessary that the hearing officer's conduct be such that the defense is able to establish whatever facts it alleges are required in order to prove the innocence of the charged employee. Thus, the conduct of the hearing officer must be totally unbiased and unimpeachably fair in the conduct of the investigation. A careful reading of the transcript in this dispute reveals that the hearing was hardly fair and impartial from its inception through its conclusion. Without dealing with what the Board considers to be wholly improper conduct on the part of the hearing officer, only two items will be detailed: the refusal of the hearing officer to permit the claimant to enter medical statements in his defense was wholly unwarranted. Similarly, the refusal of the hearing officer to even permit claimant to introduce witnesses who he had produced personally to testify was also an improper act on the part of an objective hearing officer. In addition, there were a number of occasions in which the hearing officer impeded claimant's attempt to defend himself via cross-examination or even examination of witnesses. Thus, the Board is convinced that the claimant was in this instance clearly prevented from mounting a defense to establish his innocence in this matter. The Board, therefore, cannot reach the merits of the Carrier's conclusion since no due process was afforded claimant in arriving at that conclusion. The claim must be sustained.

The Board is aware that claimant was medically disabled by his statements and that this was allegedly the cause of the entire incident. The record contains no indication of when he was physically able to return to work. Thus, in terms of remedy, claimant shall be offered reinstatement to his former position with all rights unimpaired and will receive compensation for time lost. The time lost element, however, must be measured from that date which claimant establishes via medical evidence to be furnished to Carrier that he was physically able to return to work up until December 7, 1983, the date which claimant requested be postponed in the handling of his claim.

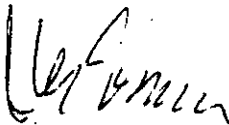
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AWARD

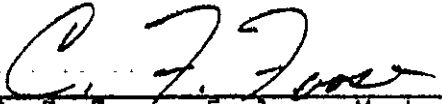
Claim sustained in accordance with the findings above.

ORDER

Carrier will comply with the award herein within thirty
(30) days from the date hereof.


I. M. Lieberman, Neutral-Chairman


G. M. Garmon, Carrier Member


C. F. Foote, Employee Member

Chicago, Illinois

May 7, 1985