

PUBLIC LAW BOARD NO. 2774

Award No. 143
Case No. 143

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the Carrier's decision to assess Claimant D. A. Jackson with twenty (20) demerits which resulted in his dismissal was in violation of the current agreement, as well as unduly harsh and in abuse of discretion.
2. That the Carrier now expunge the twenty (20) demerits from claimant's record and reinstate him to the service of the Carrier with seniority and all other rights restored and compensation for all wage loss suffered beginning July 30, 1984, and continuing forward until such time as he is reinstated."

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.

Claimant had been employed by Carrier as a Trackman on June 15, 1979. At the time of the incident herein claimant had forty demerits on his record for various infractions involving tardiness or absenteeism. The record indicates that while performing his duties on July 5, 1984, claimant was struck on the temple by a rock while a freight train was passing. The testimony of his foreman indicates that he informed the foreman of the injury immediately thereafter but no accident reports were completed and filed at that time. He worked the following day but did not report on Monday, July 9, but called in that he was ill. On July 10, 1984, while in the Division Engineer's office, he secured a medical leave of absence. The record also indicates that at the time that he was in the Division Engineer's office he declined to fill out an accident report,

claiming that he had been struck on the head on the weekend with a baseball bat by a child and, therefore, did not wish to claim an on-duty injury since that blow had exacerbated his problem. On July 27 when reporting back to work he was informed that he would have to see the Division Engineer and he was told that he was removed from service pending an investigation for his failure to file a mandatory accident report. Following an investigation, claimant's record was assessed twenty demerits and as a result of having sixty demerits on his record, he was terminated August 15, 1984.

Carrier indicates that the discharge of claimant was properly found to be appropriate in view of his over-accumulation of demerits. The demerits, in turn, were directly in accordance with the testimony and conduct of claimant. He failed to give all the facts and complete the personal injury form as required and, further, he failed to stand a safe distance from the passing train which caused the initial accident. For the reasons indicated, Carrier's actions were entirely appropriate, according to its statement.

The Organization contends that claimant reported the incident immediately to his foreman after it occurred and, at that time, was not given an accident form by his foreman who had one in his pick-up truck. The form was not offered to claimant. Additionally, the Organization notes that when claimant reported to the Chief Clerk and indicated that he wished a leave of absence after tendering his doctor's statement, the Chief Clerk asked him if he wished to file an on-duty report and claimant indicated that he did not. The clerk did not inform claimant that it was mandatory that he fill out the accident report in the course of their conversation. That testimony is clear and unequivocal, according to petitioner. Thus, the Organization insists that there were no forms offered to claimant at all, by either his foreman or the Chief Clerk, much less any information or instruction with respect to the consequences of failing to file such a form. Furthermore, the claimant indicated he was only asked to fill out the proper insurance papers by the Clerk, and nothing more. Based on these facts, petitioner insists that the assessment of twenty demerits was wholly improper and claimant should not have been discharged.

As the Board views it, neither the clerk nor the foreman completely fulfilled their obligations with respect to claimant and his injury. There was no question that


it was a work-related injury which was reported immediately to claimant's foreman and was treated. However, neither the foreman nor the clerk properly instructed claimant as to the procedures which Carrier required. He was told, on the other hand, by both these employees, apparently, that an injury record and form should be filled out. On balance, there were errors made on both sides. Claimant had responsibility to comply with the request, even though he did not know that it was mandatory to fill out an injury report. On the other hand, the two Carrier officials also had an obligation to inform claimant of the necessity and the mandate of Carrier with respect to such forms. Thus, the assessment of twenty demerits was inappropriate, as the Board views it, since claimant's infractions certainly did not warrant dismissal. While the twenty demerits are removed from his record, he should be reinstated to duty with all rights unimpaired but, in view of his responsibility in part for the difficulties, he shall not be compensated for time lost.

AWARD

Claim sustained in part; the twenty (20) demerits shall be removed from claimant's record; he shall be reinstated to service with all rights unimpaired but without compensation for time lost.

ORDER

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


I. M. Lieberman, Neutral-Chairman


C. F. Foose, Employee Member


G. M. Garmon, Carrier Member

Chicago, Illinois
February 6, 1986