

PUBLIC LAW BOARD NO. 2774

Award No. 154
Case No. 154

PARTIES
IN DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM:

- "1. That the dismissal of truck driver Ambrose Smith on March 28, 1985, was in violation of the Agreement and based on unproven charges, said action being arbitrary, and in abuse of discretion.
2. The Carrier will now be required to reinstate Claimant to his former position as truck driver with seniority and all other rights restored, unimpaired, and compensated for all wage loss suffered. "

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 Claimant was charged with being absent without authority on February 4th, 5th, 6th, 7th and 8th 1985. By letter dated February 8, 1985, Carrier notified Claimant that he was terminated in accordance with the Letter of Understanding dated July 13, 1976 (Appendix number 11). The Claimant requested an investigation by letter dated February 14, and the investigation

was held on March 15, 1975. The Claimant did not attend the hearing. Subsequently he was advised that Carrier decided to continue to hold him out of service and he was terminated.

The record of this dispute is clear. Claimant had been disciplined on five prior occasions, including one dismissal for being absent without authority. At the time of his dismissal he had 50 demerits outstanding on his record. While Claimant insisted that he did not attend the hearing because it was too far away from his normal place of work or residence, he made no request to either postpone the hearing or change its location; nor did his Union representative. Under the circumstances, it is the Board's view that the hearing was conducted appropriately and the decision with respect to Claimant's discipline was correct.

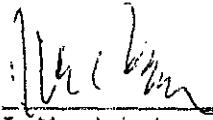
The Carrier cannot tolerate continued and habitual absenteeism and this was the rationale for the original development of the Letter of Understanding in 1976. No employer need condone or accept habitual and continued absenteeism without proper authority.

In this case there was no contact made with Carrier, much less

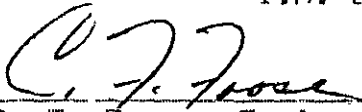
any excuse tendered for the continued absence. The Claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral Member



C. F. Foose, Employee Member



G.M. Garmon, Carrier Member

Chicago, Illinois

January 21, 1988