PUBLIC LAW BOARD NO. 2774

Award No. 156
Case No. 156

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employes

and

Atchison, Topeka & Santa Fe Railway Company

STATEMENT OF CLAIM: "1. That the Carrier violated the provisions of the current Agreement when it dismissed B & B Painter, D. J. Ritter, without first giving Mr. Ritter the benefit of a fair and impartial hearing, said action being excessive and in abuse of discretion.

2. That Carrier shall now be required to reinstate claimant to his former position with seniority and all other rights restored unimpaired and compensate him 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.

Claimant was charged with failure to report for duty at the prescribed time and place on May 22, 1985. Following a hearing he was found guilty of the charges and assessed 20 demerits. His additional demerits resulted in his having a total of 60 demerits

on his record, and subjected him to removal from service pursuant to rule 31-H of Carrier's General Rules for the guidance of employes. He was notified of his removal from service effective June 12, 1985 for having accumulation of excessive demerits.

The Petitioner insists in this instance that Claimant had a toothache and attempted to contact his foreman in an effort to secure time off to go to see the dentist. He was unsuccessful in reaching his foreman. He did indeed contact the general foreman at another location some three hours or more prior his normal starting time. The Petitioner insists that there is little testimony other than those facts introduced at the hearing and that the hearing largely was devoted to a review of Claimant's past record. Furthermore, Petitioner claims that he had tacit permission from Carrier's supervisor to be off for the remainder of the day.

Carrier believes that it acted appropriately in this instance and it is clear that Petitioner did not abide by the rules and did not contact the supervisor prior to starting time or at the beginning of his shift. He was appropriately found guilty and his excessive demerits warranted his dismissal. There is no doubt but that Claimant is guilty of the charges in this instance. The

imposition of 20 demerits does not seem to be inappropriate for the particular infraction. The fact that these 20 demerits resulted in an excessive number of demerits having been assessed and accumulated by Claimant is unfortunate but nevertheless is an appropriate extension of Carrier's disciplinary system. The discipline in this instance was well within the framework of Carrier's normal disciplinary methods and approach and should not be interfered with in any way. The Claim must be denied.

AWARD

Claim denied.

I.M. Lieberman, Neutral Member

C. F. Foose, Employe Member

G.M. Garmon, Carrier Member

Chicago, Illinois

February 11, 1988