

PUBLIC LAW BOARD NO. 2774

Award No. 168
Case No. 168

PARTIES .. Brotherhood of Maintenance of Way Employees
TO and
DISPUTE: .. Atchinson Topeka & Santa Fe Railway Co.

STATEMENT .. "1. That the Carrier's decision to remove former
OF CLAIM: .. Southern Division Trackman B. R. Edwards from
service effective February 28, 1986 was
without just cause and an abuse of discretion.
2. Accordingly, Carrier should be required to
reinstate Claimant Edwards to service with his
seniority and all other rights restored,
unimpaired, with compensation for all wage
loss from February 28, 1986."

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 herein, a Trackman was charged with absence without proper authority on January 20, 1986. Following an investigation, he was assessed 10 demerits and, having accumulated 60 demerits by this assessment, was discharged from Carrier's service.

The only issue in dispute in this matter is the question of whether Claimant did or did not have permission to be absent on

the day involved. He alleged that a Foreman who had subsequently been replaced had granted him permission to be off on the day in question. Approximately five days prior to his absence, however, a new Foreman took over as his direct Supervisor. He never discussed his impending absence with that Supervisor. Furthermore, he claimed that he called in on the day in question and discussed his impending absence in order to see a physician with the Assistant Division Engineer who, according to Claimant's testimony, promised to report the matter to his gang. The Assistant Engineer's testimony, however, was that he did not give permission to Claimant to be absent on that day and there was no communication to the gang by that Carrier official.

Essentially, the matter then in this dispute comes down to the question of credibility. If Claimant's position is correct, he had permission to be absent on the day and should not have been assessed the demerits and, therefore, should not have been discharged. However, the converse also is true. It has long been held and accepted by all that Boards such as this can make no determination with respect to such matters as credibility. It is our purview merely to interpret the Agreement in the light of facts which are presented. In this instance, the Hearing Officer properly made a credibility finding and did not credit Claimant's testimony. He found, therefore, that the facts belied the Claimant's assertion that he had permission to be off on that particular day. For that reason, the facts to be determined and,

if evaluated by this Board do not support Claimant's position, the claim therefore must be denied since Claimant did not have permission to be off on the day. The number of demerits accumulated was sufficient to cause his termination.

AWARD

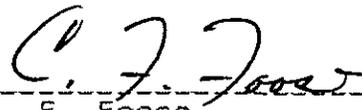
Claims denied.



I. M. Lieberman, Neutral-Chairman



G. M. Garmon
Carrier Member



C. F. Foose
Employee Member

Chicago, Illinois
July 12, 1988