

PUBLIC LAW BOARD NO. 2774

Award No. 170

Case No. 170

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

STATEMENT
OF CLAIM: "1. That the Carrier's decision of July 15, 1936 to dismiss Trackman M. A. Myers was without just and sufficient cause and in violation of the current agreement, such action being unduly harsh and an abuse of discretion.

2. The Carrier will now be required to reinstate Claimant to his former position with seniority and with all his 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.

Claimant herein a Trackman, had been employed by Carrier in 1929. On April 17, 1936, he pleaded guilty to driving a motor vehicle while under the influence of alcohol, as well as driving while under a court order, and was found to be a habitual violator. As a result of this judicial proceeding, Claimant was sentenced to one year in jail with all but 90 days suspended and fined \$1,000. In addition, he was sentenced to a term of not less than one, nor

more than two, years in the custody of the probation officer with certain conditions and stipulations. On June 4, 1986, Carrier addressed a letter to Claimant advising him that, as a result of his absence from duty without authority since May 22, 1986, his employment had been terminated, but he was entitled to an investigation in accordance with Rule 13. Subsequently, an investigation was held and following the investigation, Carrier reaffirmed its Superintendent's initial decision to dismiss Claimant as outlined on June 4, 1986.

In the course of the handling of the claim herein, following the dismissal, it was indicated to Carrier that Claimant had been enrolled in the Company's Employee Assistance Program and had participated in the follow-up therapy for almost one year. Nevertheless, there was no consideration given to the question of Claimant's reinstatement.

Carrier takes the position that Claimant's absence without authority was sufficient for his termination. The Petitioner, on the other hand, argues that Claimant was clearly ill and his chemical dependence was the basis for his absence. In addition, the Organization maintains that Claimant has demonstrated his ability to control his illness, as indicated in his eagerness to return to work and develop into a competent and reliable employee. The Organization maintains further that, in an effort to bolster the credibility of the Carrier's Employee Assistance Program,

Claimant should be afforded a second chance to demonstrate his ability to comply with Carrier's rules.

It is the Board's view that this dispute embodies a clear case of alcoholism as an illness. It is apparent that Claimant has been chemically dependent for some time. However, his participation in the Employee Assistance Program would seem to indicate that he has recovered sufficiently to maintain his role as a sound employee for Carrier. It is believed that in the interest of both parties it would be appropriate to return Claimant to his former position with all rights restored unimpaired, dependent entirely upon the approval and recommendation of the Employee Assistance Counsellor. His return to work should be on the basis of a last chance to conform to normal employee responsibilities and rules. In the course of his return, he would receive no compensation for time lost as a result of his problems.

AWARD

Claim sustained in part; Claimant shall be reinstated to his former position with all rights unimpaired on a last chance basis and only with the approval of his Employee Assistance Program Counsellor. He shall receive no compensation for time lost.

ORDER

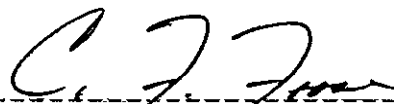
Carrier will comply with the award herein within
within 30 days of the date hereof.



I. M. Lieberman, Neutral-Chairman



G. M. Garmon
Carrier Member



C. F. Foote
Employee Member

Chicago, Illinois
July 12, 1988