

PUBLIC LAW BOARD NO. 2774

Award No. 182
Case No. 182

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE: Atchison Topeka & Santa Fe Railway Company

STATEMENT "1. That the Carrier's decision to remove
OF CLAIM: Class 3 Operator Zavala from service
was harsh and unjust.
2. That the Claimant shall be returned to
service with vacation, seniority and
all other rights unimpaired and that
he will be made whole for all time lost."

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.

At the time of his dismissal, Claimant was employed as a Trackman and had some 13 years of service with Carrier. He was terminated for being absent from duty without proper authority for more than five consecutive work days beginning April 30, 1987. Following an investigation, Carrier's decision to terminate him was

reaffirmed.

The record indicates that on the afternoon of April 19, 1987 Claimant was granted permission by his Foreman to be off to see a doctor. Admittedly, his Foreman advised him that if he needed to be off beyond that date he should contact either the Track Supervisor or the Roadmaster to obtain permission. Subsequently Claimant was absent on April 30, May 1, 5, 6 and 7, without obtaining permission. Claimant testified that he believed that he had to acquire a doctor's slip indicating that he should either go on light duty or on leave of absence. However, he testified that he did not see a doctor until May 7. It should also be noted that the record indicates no evidence whatever to show that he saw a doctor in fact on May 7, or on any other date.

The Organization maintains that Claimant was under the impression that everybody was aware of his situation and that he was fully protected until notice was received from him after consultation with the doctor. The Organization insists that this fact, together with Claimant's years of service, indicate that his dismissal was both capricious and unduly harsh.

Carrier, on the other hand, indicates that Claimant clearly understood from his Foreman that he was being granted permission to be off only on the afternoon of April 29, in order to see a doctor. Any further time off would have to be preceded by a formal approval by a supervisor. Carrier also indicates that,

particularly. in view of Claimant's previous eight disciplinary incidents. including five for being absent without authority, it was within its prerogatives to dismiss him under these particular circumstances.

As the Board examines the record there is substantial evidence in support of Carrier's position. Claimant was granted permission to be off for one afternoon only, and was advised to seek permission for any further absence. He failed to do so, and was absent for a period of six days without obtaining permission. This being absent without authority, and the additional fact that there was no evidence whatever that he did indeed ever see a doctor. indicates that Carrier's conclusions were amply supported by the facts. The dismissal was appropriate under the circumstances and will not be disturbed.

AWARD

Claim denied.



I. M. Lieberman. Neutral-Chairman



C. F. Foose, Employee Member



G. M. Garmon, Carrier Member

Chicago, Illinois
October 11, 1988