

PUBLIC LAW BOARD NO. 2774

Award No. 192
Case No. 192

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM:

"That the Carrier violated the Current Agreement when it dismissed Trackman H. Yazzie, said action being excessive, unduly harsh and in abuse of discretion.

"That the Carrier reinstate Claimant to his former Carrier position with seniority and all other rights restored unimpaired, with pay for all loss of earnings suffered, and his record cleared of all charges."

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 had approximately nine years of service with Carrier as a Trackman on the Albuquerque Division. Claimant was charged with being absent from duty without proper authority, failing to report for work at the designated point, and also for using alcoholic beverages while subject to duty, all on January 22, 1988. In addition, Claimant was also charged with violation of one of the conditions of a reinstatement agreement dated January 20, 1987, in which he had agreed that he would abstain from using any alcoholic beverage, intoxicant or other controlled substance while in Carrier's employment. Following an investigation, Claimant was found guilty of the charges and dismissed from Carrier's service.

Subsequent to Claimant's dismissal, he entered into an alcohol treatment center, and after finishing a course of treatment had been participating in the follow-up therapy offered by Alcoholics Anonymous *

at Chinle, Arizona. Carrier's Employee Assistance Counselor has indicated that the prognosis for continued sobriety for Claimant appears to be good.


After careful consideration, it is the Board's view that Claimant should be accorded one last opportunity to abide by Carrier's rules. It is clear that Carrier has taken the position, and appropriately, that alcoholism is a disease. In this instance, Claimant has made every legitimate and consistent effort to deal with this problem. Based on the recommendation of the Employee Assistance Counselor, the Board believes that Claimant shall be returned to service, with all rights unimpaired, but of course with no compensation for time lost. Furthermore, if Claimant fails to comply with the conditions set forth by Carrier's Employee Assistance Counselor, the discipline originally assessed, that of dismissal, shall be reinstated, and he shall be permanently severed from Carrier's roles. It is noted that the Board issued an interim determination with respect to this Claimant, prior to this Award being issued.

AWARD

Claim sustained in part. Claimant shall be returned to service with all rights unimpaired, but without pay for time lost, subject to the conditions set forth by Carrier's Employee Assistance Counselor, as indicated above.

ORDER

Carrier will comply with the Award herein within thirty days from the date hereof.



I. M. Lieberman, Neutral-Chairman



C. F. Foote, Employee Member



Carrier Member

Chicago, Illinois
September 29, 1989