

PUBLIC LAW BOARD NO. 2774

Award No. 31
Case No. 40

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the dismissal of Southern Division Trackman D. Davis was unjust.
2. That Trackman D. Davis be reinstated to service with seniority, vacation, all benefit rights unimpaired, pay for wage loss and/or otherwise made whole."

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, with seniority as a Trackman dated February 11, 1976, was discharged by letter dated December 18, 1980 for an accumulation of excessive demerits. At the time of his discharge he had a balance of ninety demerits outstanding. The record indicates that on December 15, 1980 Claimant signed two waivers. One was for thirty demerits in connection with his horseplay on an Extra Gang bus which occurred on December 10, 1980. The second waiver was for ten demerits for being absent without authority on December 12, 1980. The crux of this matter is that when he signed the two waivers on December 15, 1980 there is no evidence whatsoever that Claimant was made aware of the fact that signing the two waivers of investigation would result in his accumulation of sufficient demerits to automatically result in his dismissal. It is noted, however, that by letter dated November 25, 1980 Claimant had been notified by Carrier that he had fifty demerits in his personal record and that sixty demerits would "subject an employee to dismissal."

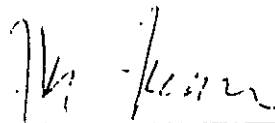
The Board first notes that it finds no problem with respect to the implementation and acceptance of the Brown System. It is noted, however, that an employee signing a waiver resulting in accumulation of more than sixty demerits should be notified of the import of his act. There is no reason why an employee should waive an investigation unless he so desires if he understands that his waiver would result in his automatic discharge. In this instance, Petitioner claims that Claimant was not aware that his signing of the two waivers on December 15 would result in his termination. Thus, although Claimant must certainly bear responsibility for his violation of Company rules involved in the two infractions for which he signed waivers, it is the Board's view that he should not have been terminated without being made aware of that probability in view of his waivers.

AWARD

Claimant will be restored to duty to his former position with all rights unimpaired but with forty-five demerits as of the date of his reinstatement. He will not be compensated for time lost.

ORDER


Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I.M. Lieberman, Neutral-Chairman



S.E. Fleming, Employee Member



G.M. Garmon, Carrier Member

May 13 , 1982

Chicago, IL