

PUBLIC LAW BOARD NO. 2774

Award No. 39
Case No. 48

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the Carrier violated the Agreement by withholding Middle Division Trackman D.L. Henderson from service November 7, 1980; failing to render prompt decision of formal investigation held November 13, 1980; not providing transcript of formal investigation held November 13, 1980; not rendering decision on formal investigation held November 13, 1980; and not substantiating allegation Trackman Henderson's personnel record contained excessive demerits.
2. That Claimant D.L. Henderson be reinstated to service with seniority, vacation and all other 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.

This dispute involves a removal of Claimant from service for accumulation of excessive demerits. The demerits in all instances were related to absences from work on the part of Claimant due to a series of circumstances, many involving alleged physical or medical problems. The handling of this case on the property, as the record indicates, is fraught with deficiencies on the part of both the Organization and the Carrier and Claimant. In fact, Claimant was offered an opportunity to return to work at one stage of the procedure and failed to abide by the conditions established by Carrier resulting in his ultimate dismissal.

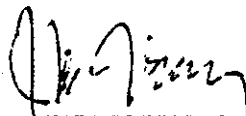
In view of all the circumstances contained in the record of this matter, it is this Board's view that Claimant should be offered one last opportunity to return to work and maintain a reasonable attendance record. Such return to work, of course, is subject to the normal return to work physical examination. He shall not be accorded any pay for time lost in the course of this return to work and the entire procedure should be clearly understood to be a final opportunity for Claimant to work under normal conditions.

AWARD


1. Claim sustained in part; Claimant shall be returned to work with all rights unimpaired but without compensation for time lost.
2. Claimant's return to work shall be subject to the normal return to work physical examination.

ORDER

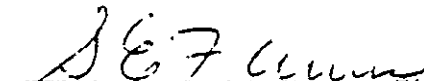
Carrier shall comply with the Award herein within thirty days from the date hereof.



I.M. Lieberman, Neutral-Chairman



G.M. Garmon, Carrier Member



S.E. Fleming, Employee Member

December 31 , 1982
Chicago, IL