

PUBLIC LAW BOARD NO. 2774

Award No. 41
Case No. 50

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 Middle Division Trackman R.L. Smith from service after a formal investigation was unjust.
2. That Claimant Smith 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.

Claimant was dismissed from service for being absent from duty without proper authority. He had been employed by Carrier as a Trackman, originally, on November 1, 1973.

The record indicates that Claimant had had some significant mental illness requiring his absence in 1980. He was discharged on June 18, 1980 for failing to keep an appointment with a doctor for a special medical examination. He was subsequently reinstated on July 28, 1980 on a leniency basis with the understanding that he would be required to pass certain medical evaluations before returning to service. He was thereafter, carried on a leave of absence from July 1980 until March 3, 1981. On March 10, 1981 he was sent a letter, by Carrier, notifying him that an extension of his leave of absence was required in the form of an application from him with medical reports. The information and forms were not provided by Claimant to continue his leave of absence. Following this, on March 25, 1981, the Claimant was sent a letter advising

him that he was absent without proper authority and that he was being terminated. Following a request for investigation, it was held on April 28, 1981 and following the investigation Carrier determined that based on Claimant's entire record its decision to terminate him was appropriate.


A careful review of the record indicates considerable confusion on the part of Claimant with respect to the requirements for extending his leave of absence. It is apparent that he was under the impression that his initial leave of absence was still in effect and that Carrier was aware of how long he would have to be away for the medical reasons in his case. It is this Board's view that dismissal, in this instance, was not warranted. Hence, the Board will order his reinstatement without compensation provided that the medical evaluation required has been complied with.

AWARD

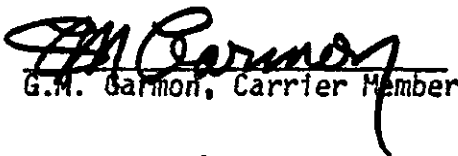
1. Claim sustained in part; Claimant will be restored to duty with all rights unimpaired but without compensation for time lost.
2. Claimant's restoration to duty will be subject to the medical clearances required by Carrier.

ORDER

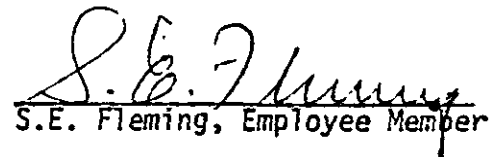
Carrier will comply with the Award herein within thirty days from the date hereof.



I.M. Lieberman, Neutral-Chairman



G.M. Garmon, Carrier Member



S.E. Fleming, Employee Member

December 31, 1982
Chicago, IL