

PUBLIC LAW BOARD NO. 2774

Award No. 5
Case No. 10

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the dismissal of Valley Division Trackman D.E. Johnson was arbitrary, capricious and in abuse of discretion.
2. That Claimant D.E. Johnson 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 was employed by Carrier on June 5, 1979. In November of that year he was a Trackman on a Section Gang. His normal working hours were from 7:00 A.M. to 3:30 P.M. On November 1, 1979 at approximately 3:20 P.M. Claimant was informed by the Assistant Foreman that there was a derailment and the Gang was required to work overtime to repair the track. Claimant allegedly told the Assistant Foreman that he had to go home to babysit with his children. The Assistant Foreman told him that he needed him to repair the track and he was not to leave his assignment. Subsequently, the Claimant left his assignment allegedly to discuss the matter with the Foreman and did not return.

On November 8, 1979 after an investigation held on that date, he was advised that he was removed from service.

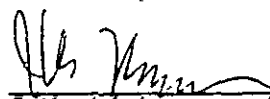
Carrier states that it was clearly appropriate to take disciplinary action with respect to Claimant's obvious and admitted refusal to work overtime as instructed and leaving

the derailment site without permission on November 1, 1979 in violation of several of Carrier's rules. Carrier points out that the Claimant was aware of the rule and stated in the investigation that he understood them. Petitioner argues that Claimant, as a short service employee, did not understand the general rules which Carrier cites in its disciplinary action. Specifically the Petitioner argues that Carrier should have communicated its understanding of the meaning of the general rules to Claimant either at the time he entered service or at the time he requested to go home on November 1.

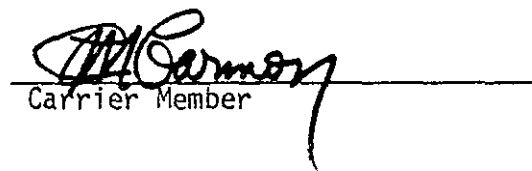
It is apparent that Carrier must rely on the appropriate attendance at work of employees and that this is even more important in time of emergencies. There is no doubt about the circumstances surrounding this disciplinary action. Claimant did indeed leave the job site when told to remain at the derailment on the date in question. Claimant's refusal to work overtime and leaving his work site without permission was clearly inexcusable and unacceptable from the standpoint of the Carrier. In view of Claimant's short service and the fact that he had in that four month period been assessed ten demerits previously, Carrier's decision to terminate Claimant cannot be considered to be harsh or arbitrary or an abuse of discretion. The claim must be denied.

AWARD

Claim denied.


I.M. Lieberman, Neutral-Chairman


Employee Member


Carrier Member

, 1981
Chicago, IL