

PUBLIC LAW BOARD NO. 2774

Award No. 58
Case No. 75

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 terms of the parties agreement when on October 23, 1981, they terminated the services of Colorado Division track man, E. W. Wissar, under improper conditions and for unjust cause.
- "2. That claimant, E. W. Wissar, shall be reinstated to his former position of track man, with seniority, vacation and all other rights unimpaired and, additionally, be compensated for loss of earnings on account of the Carrier's improper action."

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 had been employed by Carrier on July 27, 1977. On October 14, 1981, claimant telephoned the Division Engineer's office and talked to the maintenance clerk. He requested a leave of absence extending through November 2, 1981, in order to go to Mexico for the purpose of getting married. He was advised by the clerk that he should execute a leave of absence form and mail it to the Division office for approval. He secured leave of absence forms, completed them, placed them with the agent at Lamar, and departed for Mexico and his impending marriage. Upon his return on November 3, he discovered a letter indicating he had been terminated for being absent without proper authority.

Carrier notes that the leave of absence forms specifically state:

"I understand that a leave of absence requested is not granted until I am so advised by my superior officer."

Carrier argues that Claimant was not advised that his leave of absence was granted and, therefore, he was clearly aware of the fact that he had not been granted a leave in this instance. He understood the procedure, according to Carrier, since he had been granted leaves on five prior occasions. Carrier states that absences, such as that herein, are serious offenses and dismissal is the appropriate penalty for such infractions. In view of claimant's poor record and the serious nature of the violation, Carrier argues that its conclusion in this instance was wholly appropriate.

Petitioner states that this employee had a very understandable and simple reason for requesting his relatively short leave of absence (ten days). He followed the correct procedure and submitted his request on the proper form. Feeling that he was covered, he then departed for his marriage only to discover that he had been terminated during his absence.

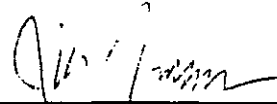
The Board is fully cognizant of claimant's poor prior record and also of the prerogative of Carrier to make determinations in cases such as this. There is no doubt but that claimant was guilty of violating Carrier's procedure with respect to leaves of absence. On the other hand, the circumstances under which this entire matter occurred and claimant's apparent attempt to comply with the proper procedure in order to get married, leaves the Board with the feeling that the discipline was not in accord with the problem. In short, the punishment did not fit this particular crime. While proper attendance is mandatory in this industry, the claimant herein was at least under the impression that he was proceeding in an appropriate manner in this particular instance. His past record notwithstanding, he should not have been terminated for this particular infraction. The discipline was too severe. Claimant must adhere to Carrier's standards in the future but in this instance he should be returned to his job with the admonition indicated.

AWARD

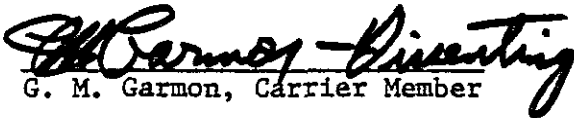
Claim sustained in part. The discipline was severe and inappropriate under the circumstances. Claimant shall be reinstated to his former position with all rights unimpaired, but without compensation for time lost.

ORDER

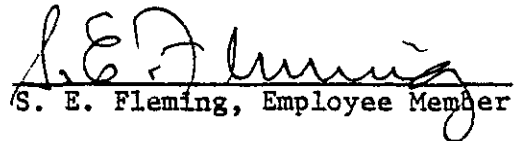
Carrier will comply with the award herein within thirty days from the date hereof.



I. M. Lieberman, Neutral Chairman



G. M. Garmon, Carrier Member



S. E. Fleming, Employee Member

April 29, 1983
Chicago, Illinois