

PUBLIC LAW BOARD NO. 2774

Award No. 60
Case No. 94

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 Parties' Agreement when, on October 5, 1981, they dismissed B. & B Painter J. W. Bailey as a result of an investigation which convened August 11, 1981, recessed and concluded October 5, 1981, said dismissal based on improper and unproven charges.
2. That the Carrier further violated the Agreement when, as a result of an investigation conducted October 6, 1981, when they again discharged B & B Painter J.W. Bailey, said investigation being superfluous, in violation of due process and in abuse of discretion.
3. That Claimant, J. W. Bailey, be reinstated to service with seniority, vacation and all other rights unimpaired and that he be compensated for loss of earnings suffered on account of 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.

The record indicates that claimant had been working on the paint gang in late 1980 and early 1981 in re-installing (after removing, transporting and refinishing) cabinets in an office building at the division headquarters. Claimant and other members of the gang complained about the difficulties of removing the cabinets and transporting them to the shop and then returning them for re-installation after being refinished. During this period of time, in February of 1981, claimant saw several doctors and was finally diagnosed as having a hernia and underwent surgery in late February. Upon returning to work on July 1, 1981, claimant was called to the Superintendent's office concerning his failure to file a report

of injuries. On the following day claimant returned to the office and in a loud and boisterous voice requested that he be furnished with an injury on duty form. The first investigation dealt with his failure to report the injury. The second investigation, held a day after the determination of the first investigation, dealt with his conduct in requesting an injury report form following his return in July. The record indicates that he was dismissed from service based on both the investigations and both sets of charges.

After consideration of the lengthy transcripts of both investigations and the arguments of both parties, it is the Board's conclusion that this matter involves a mental and physical problem, rather than one of discipline. In addition, it is apparent that the second investigation and discipline resulting therefrom was wholly inappropriate. From the entire record it is apparent that claimant herein had suffered from emotional problems in the past and this was known to Carrier. His conduct in the course of the items complained of herein also involved both the physical problems and well as mental problems. Hence, it is the Board's view that he should not have been disciplined for the incidents involved herein and there is no evidence to sustain that position of Carrier but rather should have been accorded a leave of absence, as provided for in the Agreement with respect to emotional or mental problems.

In view of the circumstances involved herein, we shall direct Carrier to reinstate claimant to his former position with all rights unimpaired but without compensation for time lost. Since there is no information as to his physical or medical ability to return to work, his return shall be conditioned upon a medical clearance. The compensation lost will not be awarded in view of the fact that there is no information as to his ability to work during the period in question.

AWARD

Claim sustained in part; claimant will be returned to work to his former position with all rights unimpaired but without compensation for time lost. His return to work shall be conditioned upon medical clearance.

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



E. F. Foose, Employee Member

Chicago, Illinois

December 7, 1983