

PUBLIC LAW BOARD NO. 4021

Award No. 15
Case No. 14

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

1. Carrier's decision to remove Illinois Division Track Foreman T. L. Dowell from service, effective May 20, 1985, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Dowell, with seniority rights unimpaired, and compensate him for all wages lost from May 20, 1985.

FINDINGS

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated November 26, 1985, and has jurisdiction over the parties and the subject matter.

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Claimant; employed by the Carrier as a Track Foreman, was absent from duty without permission on May 13, 1985, and again on May 17, 1985. On May 20, 1985, Claimant was offered a waiver of Investigation, and twenty demerits for each of the dates involved. Claimant signed the waivers, and accepted the demerits.

On that date, Claimant was advised that his record then stood at a balance of ninety demerits, and, in accordance with the terms of the Agreement (the Brown System), his employment was terminated at the close of business May 20, 1985.

The Organization asserts that Claimant was not apprised of the fact that he subjected himself to termination by accepting the demerits, and that he signed them "under threats of dismissal." It also contends that the Carrier violated the provisions of Rule 13, Appendix 11 and Rule 31(F) of the Agreement. Finally, it points out that Claimant entered an Alcohol Abuse Treatment Center, successfully completed the program, and is actively involved with Alcoholics Anonymous.

The Carrier contends that Claimant violated the Rules, agreed to

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waive his right to a formal Investigation, and accepted a total of forty demerits - twenty for each offense. It further contends that it is uncontroverted that Claimant's record stood at a balance of ninety demerits on May 20, 1985, and that the Agreement expressly permits discharge for a demerit balance in excess of sixty. Carrier contends that its actions were completely proper and appropriate.

The parties' participation in the Brown System of Discipline has been the subject of numerous Arbitration Awards. This Board, itself, has affirmed its application and propriety on prior occasions, so it will suffice to merely reaffirm it here. Under the Brown System, the Carrier has the right to terminate an employee with a balance of sixty demerits. This right is contained and published in the Agreement between the parties, and it is the obligation of the employees to be familiar with its provisions. It is not a defense for an employee to assert that he is (or was) unaware of the operation of the Rules or the Agreement. In this case, it was Claimant's right and responsibility to ascertain the demerit balance on his record before agreeing to accept the proffered demerits. Failure to do so is at his peril.

There was no violation of Rule 13 or Appendix 11 in this case, since the Claimant executed a waiver of his rights to an Investigation. The Organization's also asserts that Carrier violated the provisions of Rule 31 (F), of the General Rules for the Guidance of Employees, which provides:

When demerits are issued, no less than five nor more than thirty demerits will be assessed against an employee's record at any one time.

It is clear that Claimant was assessed twenty demerits for each of two separate offenses, and it is clear that neither exceeded the limits contained in Rule 31. There have been cases in which an employer has treated related or consecutive offenses as separate offenses in order to assess a greater degree of discipline, but that is not the case here. In this event, Claimant absented himself from duty on two dates, four days apart; clearly two separate offenses. Further, as Carrier pointed out, in this case the Claimant's record already stood with a balance of fifty demerits before these were added, and only ten additional demerits were necessary to warrant discharge. Even if the two offenses

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were combined, and as few as ten demerits had been issued, the result would have been the same. There was no violation of Rule 31 of the General Rules for the Guidance of Employees.

Finally, the Organization cites the fact that the Claimant has completed an Alcohol Rehabilitation Program, and actively is engaged in the Program of Alcoholics Anonymous. There is nothing in the record which indicates that such facts have any bearing on the case at hand, and the Board can only conclude that it represents a plea for leniency.

All Divisions of the National Railroad Adjustment Board, as well as Boards such as this, have firmly held that leniency is a prerogative of the Carrier. As much as this Board may wish to grant leniency, it generally is not viewed as our right. Certainly, exceptions occur, but those must be limited to unusual instances and special circumstances, where it is clear that the interests of the parties would best be served by the granting of leniency.

The Board finds that the Carrier acted within its contractual rights in this case, and, therefore, we will deny the claim.

AWARD

Claim denied.

C. F. Foose
C. F. Foose, Employee Member

L. L. Pope
L. L. Pope, Carrier Member

J. R. Johnson
J. R. Johnson, Chairman
and Neutral Member

Dated: June 24, 1986