

PUBLIC LAW BOARD NO. 4021

Award No. 24
Case No. 24

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 Albuquerque Division Track Supervisor M. R. Mizer from service effective July 24, 1985, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Mizer,, with seniority rights unimpaired, and compensate him for all wages lost from July 24, 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.

Claimant was employed by the Carrier as a Trackman in February, 1974, and received a series of promotions through supervisory positions, leading to his most recent position of Track Supervisor. In May, 1983, Claimant asserted that he injured his back while he was on duty, and had not performed service for the Carrier since that time. The issues of whether or not the injury was, in fact, sustained, or whether it was work-related, are not before this Board.

The record reflects, through a series of Medical statements, that Claimant was under the care of a physician, and on an approved Leave of Absence from May, 1983, until June 1, 1985. Claimant neither requested an extension, nor furnished medical evidence in support of continued Leave, prior to its expiration on June 1, 1985. Since the Rules require that employees secure an approved Leave of Absence, Claimant was charged with certain Rule violations on June 25, 1985, and an Investigation was scheduled for July 22, 1985. On July 12, 1985, Claimant furnished evidence of his continued incapacity, and that he remained under the care of a physician. The Investigation was held as scheduled, and Claimant was discharged from the service for violation of the rules.

The parties do not dispute that the Rules provide for employees to secure Leave and provide appropriate medical evidence of incapacity, and the Claimant does not deny that he failed to renew his approved leave prior to its expiration. It is the position of the Organization that Claimant's medical circumstances at and around the time, justify, or at least mitigate, Claimant's failure to renew his leave. In essence, its argument is that no discipline should have been assessed, and the penalty of discharge was wholly inappropriate.

It is clear from the record that Claimant was fully aware of the requirement to secure a renewal of his Leave of Absence, in fact, as a Track Supervisor, it is reasonable to expect a higher regard for the Rules than other employees. Claimant knew that the Leave was about to expire, and made no attempt to secure its renewal, until he received a notice of the charges, and an Investigation was scheduled. The Board finds that the Claimant was aware of the Rules, and that he made no attempt to comply with the Rules. The Board finds that discipline was appropriate.

However, the Board agrees with the Organization's position that

discharge was an excessive penalty. Notwithstanding the fact that Claimant could and should have made provision to renew his leave, several important factors preclude this Board from supporting Claimant's discharge. First, the record shows that the Claimant was hospitalized shortly before and, again, shortly after the date on which his leave expired, and had undergone several medical and surgical procedures at that time. The record also shows that Claimant was in the process of changing Doctors during that period, and neither were able to determine when he might be able to return to service. Such circumstances do not justify his disregard for the Rules, but certainly cast his failure in a better light.


The record also shows that Claimant had been a good employee. As stated above, Claimant had eight years' of service, with consistent promotions through the ranks. His discipline record was very good, with one prior incidence of 20 demerits, which were cancelled by eight months with a clear record. Claimant's record was clear at the time of his discharge.


Finally, we must look to the harm done to the Carrier by Claimant's violation. The Carrier was aware of Claimant's condition, and had filled his position on a permanent basis. While his tardy application for extension did violate the Rules, it caused the Carrier no harm or hardship. The Rules are designed to permit the Carrier to protect its service, and that is a real and appropriate consideration; however, where, as here, the needs of the service already are protected, the violation becomes more technical in nature. Under the circumstances in this case, Claimant's failure to renew his Leave in timely fashion did not warrant his discharge.

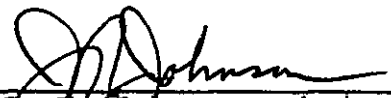
The Board finds that anything beyond a thirty day suspension from service is excessive. Therefore, we will reduce the discipline to a thirty day suspension, and restore Claimant to service with seniority and all other rights unimpaired, and with compensation for net wages lost, if any, from such date following expiration of the thirty day suspension that Claimant was physically able to return to duty.

AWARD

Claim sustained to the extent described in the Findings.


C. F. Foose, Employee Member


L. L. Pope, Carrier Member


J. R. Johnson, Chairman
and Neutral Member

Dated: 8/22/86