

PUBLIC LAW BOARD NO. 4021

Award No. 27
Case No. 25

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 B&B Helper Warren Roanhorse from service effective August 21, 1984, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Roanhorse with seniority rights unimpaired, and compensate him for all wages lost from August 21, 1984.

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 was employed by the Carrier as a Bridge & Building Helper on the Albuquerque Division. Claimant was absent from work without authority commencing August 14, 1984, and was sent a letter dated August 21, 1984, via Certified Mail. The letter provided as follows:

As a result of your having been absent from work without proper authority commencing August 14, 1984, an apparent violation of Rule 13, General Rules for the Guidance of Employees, Form 2626 Standard, this is to advise you that your seniority and employment on the Albuquerque Division of the Santa Fe Railroad has been terminated effective this date.

You may, within 20 days of the date of this notice, if you desire, request that you be given an investigation under Rule 13 of the current Agreement. That request should be forwarded to my office by Certified Mail.

The Claimant did not request an Investigation within the time limit provided in the letter or the Agreement, and he has been terminated pursuant to the July 13, 1976 Letter of Understanding. This Agreement deals with excessive absence, and its provisions were followed in this case.

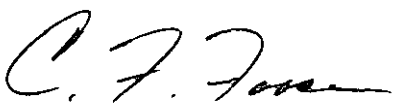
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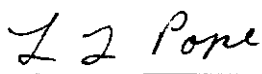
The Carrier points out that the claim is barred by the time limit rule of the Agreement, because no appeal of Carrier's action was made within 60 days, as prescribed by the Agreement. In fact, the initial appeal was not made until May 15, 1985 - nearly nine months later. The point, however, is moot here, because the case is without merit on its face.

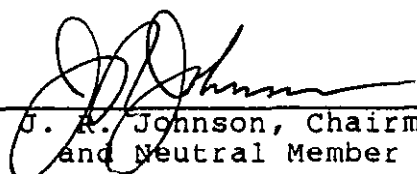
The Rule is clear, and the Claimant clearly was in violation of the provisions of the Letter of Understanding. The terms of the Agreement were followed by the Carrier, and Claimant could have stayed his termination by requesting an investigation. Claimant's failure to request the investigation left the self-executing provisions of the Rule free to operate, and they operated to his disadvantage. There are no mitigating circumstances apparent in the record, so the Board must uphold Carrier's action.

AWARD

Claim denied.


C. F. Foose, Employee Member


L. L. Pope, Carrier Member


J. R. Johnson, Chairman
and Neutral Member

Dated: 9/30/86