

PUBLIC LAW BOARD NO. 4021

Award No. 33
Case No. 29

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 Trackman P. Nelson from service effective August 7, 1985, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Nelson, with seniority rights unimpaired, and compensate him for all wages lost from August 7, 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 was employed by the Carrier as a Trackman since 1984. On August 7, 1985, he was sent a letter advising him that, since hhe had been absent from work without proper authority since July 29, 1985, his seniority and employment were terminated in accordance with Rule 13 of the Agreement between the parties. The letter advised that he could request an Investigation within 20 days of the date of the letter, if he so desired.

The twenty days passed, and nothing was heard from the Claimant until a claim was filed by the General Chairman on September 25, 1985 - more than one and one-half months later. That claim did not offer any contention that Claimant was absent without authority, or explanation for his failure to request an Investigation.

The Agreement is clear, and the Carrier followed all the requirements of the Rules. This Board has previously ruled upon the requirements of the Rule in our Award Number 16, in which we held:

The record is clear that the Carrier followed the terms of the Agreement in this case. It sent the requisite letter to Claimant advising

him of the action, provided a copy to the Organization, and explained the Claimant's right to request an investigation. Claimant, on the other hand, did not seek permission to be off duty as required by the Rules, and did not even notify the Carrier of his whereabouts. Further, he did not request an investigation to stay the Carrier's action.

* * * * *

Claimant showed a lack of concern for the needs and rights of the Carrier, and, in view of his extremely short service, we can see no reason to restore him to service.

In view of the Claimant's disregard for the provisions of the Agreement, and failure to exercise the rights provided to him therein, it is not appropriate for this Board to disturb the Carrier's action.

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: January 20, 1987

