

PUBLIC LAW BOARD NO. 4021

Award No. 4
Case No. 1

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

1. Carrier's decision to suspend Middle Division B&B Carpenter L. M. Beasley from service during the period from January 14 through February 20, 1985, was unjust.
2. Accordingly, Carrier should be required to compensate Claimant Beasley for all wages lost during the suspension period.

FINDINGS

This Board, upon the whole record and all the evidence, 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 by Agreement dated November 26, 1985, and has jurisdiction of the parties and the subject matter.

On January 11, 1985, Claimant was sent a Certified letter by the Superintendent, advising him that, pursuant to a Letter of Understanding dated July 13, 1976, (Appendix 11 of the Agreement between the parties), his employment and seniority were terminated; but, that Claimant could request an Investigation under Rule 13 of the Agreement within 20 days, if he desired. Claimant requested an Investigation, and Claimant was charged with "being absent without permission on January 3, 4, 7, 8, and 9, 1985." As the result of the Investigation held on February 8, 1985, Claimant was discharged. The Claimant was reinstated "on a leniency basis," by the Superintendent, effective February 20, 1985.

The Organization contends that Carrier violated Appendix 11 of the Agreement between parties, which permits the Carrier to terminate the employment of personnel who absent themselves from duty without authority, without a formal Investigation, unless an Investigation is requested by the employee within 20 days of the date of written notice of termination. Specifically, the Organization contends that Carrier violated the "Note" to Appendix 11, which provides:

NOTE: Effective January 1, 1984, the above understanding is to be applied only in cases where the employee is absent without authority more than five (5) consecutive work days. (Emphasis added).

The transcript of Investigation clearly reveals that Claimant's wife called in to notify Carrier that Claimant was ill, and would not be at work on January 3, 1985. Carrier did not dispute that Claimant was ill on January 3, 1985, or that his wife had called in. The transcript further reveals that only the "clerk" was available when Claimant's wife called, and, hence, it was not possible to gain "authority" for Claimant to be absent. Under the circumstances, Claimant was not "absent without permission" on January 3, 1985.

It is the Opinion of the Board that the "Note" to Appendix 11 of the Agreement, limits the application of that provision only to cases where the employee is absent without authority more than five days. The plain language of the provision can support no other conclusion. In cases involving five days or less, Carrier must follow the basic provisions of Rule 13 of the Agreement, which involves different burdens, and may or may not warrant

termination if guilt is proven. It is clear that Appendix 11 was written to apply solely to a specific situation, and the "Note" further narrows its application. Carrier's use of Appendix 11 was inappropriate in this case, and, therefore, the discipline cannot be supported. The discipline will be removed from Claimant's record.


However, the record reflects that Claimant was under a Doctor's care, and physically unable to work during the entire period for which he claims compensation for all wages lost. Since Claimant was physically unable to work, he suffered no wage loss as a result of Carrier's action. Therefore, we will deny the monetary portion of the claim.

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: February 28, 1986