

Award No. 15
Case No. 15

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Carrier's decision to remove former New Mexico Division Group 5 Operator G. E. Thompson from service, effective July 7, 1987, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Thompson to service with his seniority rights unimpaired and compensate him for all wages lost from July 7, 1987.

FINDINGS: This Public Law Board No. 4244 (the "Board"), upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, this Board has jurisdiction over the parties and the subject matter involved.

In this dispute former New Mexico Division Group 5 Operator G.E. Thompson (the "Claimant") was notified to attend a formal investigation on June 23, 1987, concerning his alleged absence without proper authority on May 26 to 29, 1987, and June 1, 1987, in possible violation of Rules B and 604, Rules Maintenance of Way and Structures, Form 1015 Std., effective October 28, 1985. The investigation was rescheduled and held on July 7, 1987. Pursuant to the investigation the Claimant was found guilty of violating Rules B and 604, and his personal record was assessed thirty (30) demerits.

The evidence of record shows that the Claimant was absent from work without authority on May 26, 27, 28 and 29, and he was late for work on June 1. Roadmaster A.S. Kiefer testified that the Claimant called him on the morning of May 27, 1987, and stated that he would not be to work that day on account of car trouble. Kiefer informed the Claimant that he was not authorizing his absence and reminded him of their May 12th conversation wherein the Claimant was informed that "car trouble" would no longer be an acceptable excuse for being absent from work.

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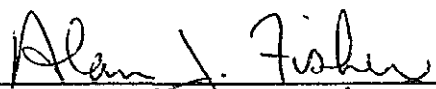
The Claimant admitted at the investigation that he was AWOL on the listed dates but only 13 minutes late for work on June 1. The Claimant further testified that he did not report for work on account of "car trouble".


As a result of finding the Claimant guilty of being absent without authority on May 26, 27, 28 and 29, and reporting to work late on June 1, 1987, the Claimant was assessed thirty (30) demerits. The Claimant was subsequently dismissed from the Carrier's service on July 7, 1987, for an accumulation of excessive demerits pursuant to Rule 31-H of the Carrier's General Rules for the Guidance of Employees and a Letter of Understanding dated April 16, 1979.


The Board has reviewed the evidence of record and finds that the Claimant was given a fair and impartial investigation and that the assessment of thirty (30) demerits was not excessive discipline. The Board further finds that the Claimant's total of demerits on July 7, 1987 was in excess of sixty. Accordingly, the Carrier had the right to remove the Claimant from service.

The Organization alleged that the Claimant was assessed sixty (60) demerits by the Carrier on July 7, 1987, in violation of Carrier's Rule 31(F) which read in pertinent part: "When demerits are issued, no less than five nor more than thirty demerits will be assessed against an employee's record at one time." The Board finds that this allegation is without merit. The records of this case and Case No. 16 of this Board show that the Claimant was issued 30 demerits each as a result of two separate investigations. The investigations were held on the same day at the Organization's request.

AWARD: Claim denied.


Alan J. Fisher, Chairman
and Neutral Member


Clarence F. Foose
Organization Member


Lyle L. Pope
Carrier Member

Dated: May 26, 1988
Chicago, Illinois