PUBLIC LAW BOARD NO. 4244

Award No. 196
Case No. 201

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

-and-

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

Statement of Claim:

1. Carrier's decision to remove former Southern Region Seniority District No. 1 Trackman J. M. Reyes from service, effective October 3, 1994, was based on unproven charges in violation of the Agreement and unjust.

2. Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights and all other rights restored unimpaired and compensate him for all wages lost from October 3, 1994. (Files 94-11-145/210-13D2-949)

INTRODUCTION

This Board was duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Act, 45 U.S.C. Section 153, Second. This matter came on for hearing before the Board on

September 9, 1996, in Chicago, Illinois. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Railway Labor Act ("Act"), as amended.

FINDINGS

Commencing May 9, 1994, the claimant, trackman Joe Reyes, voluntarily accepted temporary vacancies from his off-in-force status without a regular assignment. On July 11, 1994, the claimant was issued notice of an investigation into charges that he allegedly claimed mileage, travel time and/or expenses to which he was not entitled for the dates of May 9, 12, 16-20, and 30, 1994; and June 1-3, 6-10, and 13-17, 1994. A formal investigation was conducted on September 20, 1994. On October 3, 1994, the Carrier dismissed claimant for violation of Rules B and 1007 of the Safety and General Rules for All Employees, in effect June 30, 1993.

Rule 10 of the collective bargaining agreement details the process of filling vacancies on positions under advertisement and temporary vacancies of thirty calendar days or less, and authorizes a senior qualified employee who is furloughed to protect a vacancy. The rule further references the Carrier's position set forth in a letter dated February 7, 1984 (Attachment 23 to the agreement), that off-in-force employees are not entitled to reimbursement of actual necessary expenses pursuant to Rules 37(f) and 38(d) while protecting vacancies on positions under advertisement, pending force assignment. The basis

for Carrier's position as contained in the February 7, 1984, correspondence is that such employees have no "headquarter's point or outfit car," and no "regular assignment" to trigger the provisions of Rule 37(f) and Rule 38(d). Rule 37(f) details the mileage allowance, actual necessary expenses for meals and travel time for employees protecting temporary vacancies under Rule 10(a) of the agreement.

The record establishes the claimant was off-in-force reduction, but had voluntarily filled the relief jobs on the dates cited in the July 11, 1994, notice of charges. A pay sheet and time sheet reveal that claimant was paid for seven hours and forty-five minutes travel time, together with an allowance for 310 miles for each date, May 9 and May 12, 1994. A mileage and time claim also was filed for May 16, 1994, and the roadmaster testified that he never authorized the claimed mileage. Significantly, the claimant submitted an Employee Expense Account, Form 1665, for the period May 23, 1994, to June 3, 1994. The grievant claimed a total auto expense in the amount of $172.26 for 594 miles during this period. In particular, he requested meal reimbursement for May 23 despite evidence he did not work that date. For the period May 24-27, the claimant claimed and received payment for meal expenses in the amount of $25.00 per day, while also receiving Code 48 payments of $14.50 per diem for meals. For May 30, he claimed mileage in the amount of 366 miles, and nine hours for travel time.

The documentary evidence revealed additional dates for which claimant received payment of his entire meal expense request, along with the per diem meal allowance

and mileage. Claimant requested mileage payment for 366 miles and nine hours of travel time on June 16. Finally, on June 17, 1994, the grievant was absent from his assignment to temporarily fill the vacancy of a trackman on the Ardmore section; nevertheless, he filed a claim for meal reimbursement and mileage expenses which he received in addition to his receipt of a Code 48 payment for that date. Claimant signed and submitted a Form 1665 expense account statement for June 6-10, and June 13-17, 1994, claiming a total of 732 miles in auto expense, and $25 per day in meal expenses.

The Board has carefully reviewed the transcript of the investigation, and finds the claimant submitted claims for travel time and mileage without concern as to whether he was properly entitled to payment for those expenses. At first he denied making a claim for expenses on May 9 and 12, 1994, as reflected on the time sheet for those dates, and then proceeded to testify he could not recall if he told the foreman or timekeeper he was entitled to travel time and mileage. The claimant admitted signing a Form 1665 claiming 297 miles for mileage reimbursement and meal expenses for May 23, 1994. Although he could not recall whether he worked that date, claimant admitted he would not be entitled to the claimed expenses if he did not work.

Claimant further denied knowledge of his receipt of Code 48 pay for the same days for which he claimed meal expenses. Claimant maintained that the fact he did not work on June 17, 1994, but still filed a claim for meals and mileage expense, was "a case of someone making a mistake." The diary of track work performed at Ardmore shows claimant was absent on June 17, and a memorandum entry indicates that he received an emergency

call at the motel and went home. Although claimant could not recall such an emergency phone call, he stated he left for home on June 16 or 17. When questioned by the hearing officer, claimant responded as follows:

> Q. Well, if you got an emergency call at the motel, as it says here, and you had to go home, would you be entitled to mileage and expenses?
> A. If I did not work, I don't think I would be entitled to it. (Tr. 38).

The Board finds that the claimant signed and filed expense account forms when he knew he was not entitled to claim the requested meal and travel expenses. Whether or not claimant was performing vacation relief work on May 23, 1994, the stated Carrier position is that off-in-force employees are not entitled to reimbursement of actual necessary expenses, and there is no evidence claimant was a regularly assigned employee protecting a temporary vacancy. Moreover, not only did claimant file for reimbursement of expenses on dates he worked for which he was not entitled, while simultaneously receiving Code 48 pay, he also claimed mileage and meal expenses for May 23, 1994 and June 17, 1994 -- dates on which he performed absolutely no service for the Carrier. Claimant fully understood by his own admission that performance of work was a prerequisite to payment of the allowances and reimbursement for actual necessary expenses, if any, under the agreement. Under these facts and circumstances, the Board concludes claimant's discharge was proper, and issued for just cause.

AWARD

The claim is denied.

Greg Griffin, Carrier Member

Clarence F. Foose, Employee Member

Jonathan I. Klein, Neutral Member

Award issued the 20th day of November, 1996.