

PUBLIC LAW BOARD NO. 4244

Award No. 197
Case No. 202

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 Eastern Region Seniority District No. 2 Trackman Steven Stewart from service, effective November 3, 1994, without first according Claimant a fair and impartial investigation was unjust and in violation of the current agreement.
2. Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from November 3, 1994. (Files 95-11-4/30-13A1-9427)

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

On November 3, 1994, the claimant, trackman Steven Stewart, was notified that his seniority and employment with the Carrier was terminated due to his being absent without proper authority for more than five consecutive work days. The claimant timely exercised his right to an investigation pursuant to the provisions of Appendix No. 11 to the collective bargaining agreement. A formal investigation was conducted on December 19, 1994, and by letter dated December 28, 1994, claimant was dismissed from his employment with the Carrier for violation of Rules 1.13 and 1.15 of the Safety and General Rules for All Employees, effective September 30, 1994.

The roadmaster testified that on Friday, October 21, 1994, the claimant was assigned to his territory after recently returning to work from lay off status. The roadmaster instructed claimant he had to report to the foreman and receive permission whenever he requested time off work. The roadmaster also stated the claimant had been suspended for ninety days for being absent without proper authority.

The claimant spoke with his foreman on October 21, 1994, and attempted to call off sick at 6:50 a.m. The foreman refused to authorize the claimant's absence, and sent an E-mail message to the roadmaster to confirm the decision to disallow claimant's absence

from duty. According to the roadmaster, the claimant was denied permission due to the fact that in weeks previous to October 21, 1994, claimant had missed work every Monday and Friday. Therefore, the claimant was instructed to report to work due to his pattern of excessive absenteeism. The roadmaster testified that the foreman sent him a message via E-mail whenever an employee was absent. The only date the claimant telephoned was on October 21, 1994, for which date permission to be absent was denied. Despite instructions to report to work, and after notification that he was not given permission to be off work sick, nothing further was heard from claimant for the following work week.

The claimant acknowledged that he was familiar with Rules 1.13 and 1.15. He testified that he called in sick three days in a row, but he did not specify the actual dates or times of the telephone calls. Claimant maintained that he received permission to be off work the first day he spoke with his foreman, but acknowledged that he did not receive permission to be off work the second or third days when he allegedly telephoned.


The Board finds the claimant absented himself from duty without proper authority. The Board holds that the testimony and e-mail confirmation support a finding that despite claimant's protestations to the contrary, he was without permission to absent himself on October 21, 1994. The claimant offered no proof whatsoever that he suffered from any illness or any other reason which caused his absence from duty without authority. There is no evidence to support a finding that by reason of the issuance of a new rules book effective


September 30, 1994, that any of the rules which governed the claimant's duties in this case were modified or changed in a manner which adversely affected the claimant in any way.

The Board concludes that claimant violated the rules with which he was charged. Further, review of claimant's prior record indicates he was dismissed on June 17, 1986 for excessive demerits and reinstated to employment; he was dismissed a second time on November 18, 1988, for excessive demerits and reinstated. On October 4, 1993, the claimant received a deferred suspension for being absent without leave, which suspension was activated on December 1, 1993, for absence without leave. The Carrier's administration of progressive discipline has had no apparent effect on the claimant's conduct, and his continued failure to report to work, in this case his absence from duty without authority between October 21 and October 28, 1994, compels a finding that his discharge was 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.