

Award No. 23  
Case No. 23

## PUBLIC LAW BOARD NO. 4244

PARTIES )  
TO )  
DISPUTE )

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
AND  
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Carrier's decision to remove former Southern Division Trackman L.C. Watson from service, effective December 28, 1987, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Watson to service with his seniority rights unimpaired and compensate him for all wages lost from December 28, 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 Southern Division Trackman L.C. Watson (the "Claimant") was notified to attend a formal investigation on December 7, 1987, to develop the facts and place responsibility, if any, concerning his alleged absence without proper authority concerning his alleged absence without proper authority on November 11, 1987, in possible violation of Rules 13 and 15 of the Carrier's General Rules for the Guidance of Employees, Form 2626 Std. The investigation was postponed at the Claimant's request and eventually held on December 21, 1987. Pursuant to the investigation he was found guilty of the rules violation and his personal record was assessed twenty (20) demerits on December 28, 1987. The assessment resulted in a balance of 70 demerits on the Claimant's record. Accordingly, the Claimant was further notified that effective immediately his employment with the Carrier was terminated due to the accumulation of excessive demerits pursuant to Rule 31-H of the Carrier's General Rules and Letter of Understanding dated April 16, 1976.

Extra Gang Foreman D.L. Mott testified at the investigation that the Claimant was scheduled to work on November 11, 1987, but he did not report for duty and he did not request permission to be absent from duty. Mott further testified that upon completion of work on November 11, when he returned to the depot at Somerville, he received a note from a clerk which stated that the Claimant would not be in to work on November 11.

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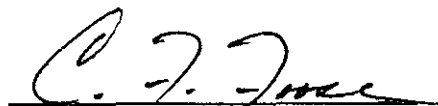
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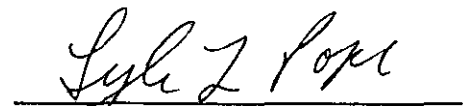
At the investigation the Claimant admitted that he was absent from duty on November 11, 1987, and that he did not obtain permission to be off. The Claimant testified that he was absent because he departed Somerville at 9:00 p.m. on November 10, to drive to Louisiana (a four hour drive) to attend to his wife who was in the hospital. However, he did not offer any evidence into the record to substantiate his claim. Moreover, he offered no valid reason why he did not make an effort to obtain permission prior to his departure to be absent on November 11, 1987.

The Board has carefully considered all the evidence of record. The Board finds that the Claimant violated Rule 13 and 15 as charged when he was absent without authority. Notwithstanding the Organization's argument that the discipline assessed the Claimant was excessive in proportion to the rules violated, the assessment of 20 demerits was warranted and justified given the Claimant's past record. The record shows that the Claimant had been disciplined on numerous occasions for being absent without proper authority including the assessment of ten demerits on October 27, 1987. The Claimant was clearly aware of the fact that he was required to obtain permission to be absent from duty. Accordingly, the Claimant was properly removed from service for his accumulation of excessive demerits.

AWARD: Claim denied.

  
Alan J. Fisher, Chairman  
and Neutral Member

  
Clarence F. Foote  
Organization Member

  
Lyle L. Pope  
Carrier Member

Dated: September 21, 1988, Chicago, Illinois