

Award No. 34  
Case No. 35

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 Texas Division Trackman L. R. Johnson from service, effective June 13, 1988, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Johnson to service with his seniority rights unimpaired and compensate him for all wages lost from June 13, 1988.

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

In this dispute former Texas Division Trackman L. R. Johnson (the "Claimant") was notified by a letter dated June 13, 1988, that his seniority and employment with the Carrier was terminated that date on account of being absent without proper authority. The Claimant requested a formal investigation, and it was scheduled for July 19, 1988. The investigation was eventually held on August 2, 1988. The Claimant's removal from service was upheld following the investigation.

The Claimant testified at the investigation that he had injured his back while on duty and sought medical attention on May 11, 12 and 13, 1988. On May 13, his doctor instructed the Claimant to remain off work until his condition improved. The Claimant testified that he returned to the work site and informed his supervisor, Foreman R.D. Morgan, of these instructions. The Claimant alleged that Morgan replied that he would attend to the Claimant's request and make sure that Roadmaster J. Campbell received the necessary documents. Further, pursuant to Morgan's request, he delivered his doctor's report to Morgan's personal residence and left it in the mailbox. The Claimant then sent a wire to various Carrier officials which stated that he was on a medical leave of absence.

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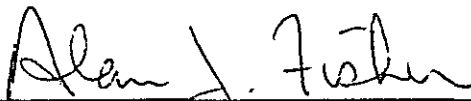
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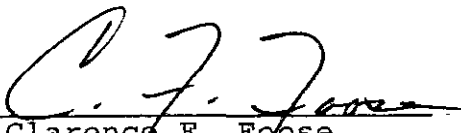
Morgan verified at the investigation that the Claimant visited him at the job site regarding a medical leave of absence. He testified that he instructed the Claimant to provide him with copies of the doctor's appointment slips and medical release to substantiate his absence. He also admitted that he informed the Claimant that he would submit the Claimant's request to Roadmaster Campbell. However, Morgan testified that although he never received the proper documentation from the Claimant he nevertheless discussed the Claimant's request with Campbell.

The Carrier's rules clearly state that an employee must not be absent from work without proper authority. Further, an absence greater than ten calendar days must be authorized by a formal leave of absence. The record shows that the Claimant verbally requested a formal leave of absence from the Carrier but that he made no other effort to confirm the status of his request. The Claimant did not comply with the Carrier's rules in the handling of his request, and the Carrier had the right to remove the Claimant from service. However, it is the Board's opinion that the Claimant should be given the opportunity to return to service. Although the Claimant was absent without proper authority it is clear from the record that he did not intentionally attempt to circumvent the Carrier's rules. Based on these circumstances, the Claimant shall be reinstated to the Carrier's service but without pay for time lost.

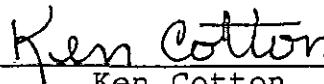
AWARD: Claim sustained as set forth in the Findings.



Alan J. Fisher, Chairman  
and Neutral Member



Clarence F. Foose  
Organization Member



Ken Cotton  
Carrier Member

Dated: June 29, 1989  
Chicago, Illinois