

Award No. 72
Case No. 74

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: Carrier's decision to remove Texas Division B&B Mechanic J. R. Self from service, effective June 18, 1990, was unjust.

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 June 18, 1990.

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 B&B Mechanic J. R. Self (the "Claimant") was notified in a letter dated June 21, 1990 that effective immediately his seniority and employment with the Carrier were terminated due to his absence from duty without proper authority or approved leave of absence from June 11 through June 21, 1990. He was further advised that within 20 days of the date of this letter he could request a formal investigation under Rule 13 of the Agreement between the Organization and the Carrier.

The record shows that in a letter dated June 28, 1990, the Claimant requested a formal investigation. The investigation was then scheduled for August 3, 1990 concerning the Claimant's alleged violation of Rules 1004, 1007, 1028 (b) of the Carrier's Safety and General Rules for All Employees, when he was

absent without proper authority from June 11 - 21, 1990. The investigation was held as scheduled. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules and his termination from employment was upheld.

There is no dispute in the record that the Claimant was absent from duty without proper authority June 11 through 14, and June 19-21. The Claimant and various Carrier witnesses all testified that the Claimant reported for work on June 18. However, on that date he was advised by Foreman N. A. Gossett that he would not be allowed to work until a determination was made regarding his employment status after being absent four days. Rather than wait for a reply the Claimant advised Gossett that he was returning home to Brownwood, Texas, which was approximately 350 miles away, and that he would call upon his arrival. At approximately 10:20 a.m. on June 18, Gossett received word from his superiors that the Claimant could return to work. Gossett contacted the Claimant at 4:00 p.m. and instructed him to report for work on June 19.

It is established also that the Claimant did not report for work on June 19, nor did he obtain permission to be absent from duty. Foreman C. R. Andrews testified that the Claimant called him at 6:30 a.m. on June 19, 30 minutes after the scheduled starting time, and stated that he could not be there for work.

The Claimant admitted at the formal investigation that he was absent from duty without authority June 11-14, and that he was not given direct authority to be absent from work on Tuesday, June 19. He testified that after he had returned home on June 18, and learned that he had not been discharged, he felt that he could not make the 7-hour return trip by the morning of the 19th and still be able to physically perform his duties. He also realized that his employment status was uncertain again because he did not report for work on June 19. Thus, he stayed at home and tried to contact the Organization on June 20 and 21, to resolve the matter rather than drive from Brownwood to San Augustine, Texas.

The Board has reviewed the testimony and evidence of record. Based on this review, and after considering his past work record, the Board concludes that the Claimant shall be given a last chance opportunity to return to the Carrier's

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service. It is clear from the record that the Claimant was absent from duty without authority from June 11 through June 21. Further, his absence was in violation of the cited rules. However, the Board finds that the Claimant's absence was in part due to his exercise of poor judgment when he returned home on June 18, and his failure to obtain proper authority to be absent June 11-14 to attend to personal matters.

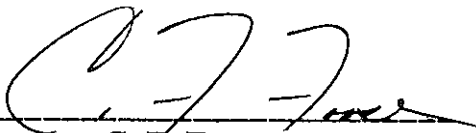
It is the Board's decision that the Claimant will be reinstated to service with his seniority rights unimpaired but without pay for time lost. The Claimant is advised that his reinstatement is a "last chance" opportunity for him to demonstrate to the Carrier that he can be a responsible employee.

AWARD: Claim sustained as set forth above.



Alan J. Fisher

Chairman and Neutral Member



C. F. Foose

Organization Member



Lyle L. Pope

Carrier Member

Dated: February 28, 1991