

AWARD NO. 1

Case No. 1

PUBLIC LAW BOARD NO. 4823

PARTIES) THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
TO) versus
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Claim on behalf of Trackman Fred Valle, California Division, seniority date August 27, 1984, for reinstatement to his former position with seniority, vacation and all benefit rights restored and compensation for all wage loss and/or made whole beginning August 8, 1988 continuing forward until the claimant is restored to his former position.

FINDINGS:

This Public Law Board No. 4823 finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was removed from service pursuant to Letter of Understanding dated July 13, 1976, for being absent from duty without authority from July 26 through August 5, 1988, and, pursuant to Letter of Understanding dated April 16, 1979, for accumulation of excessive demerits; i.e., sixty (60).

The Employees contend that the decision (or decisions) to remove the claimant from service was (were) excessive and unjustified. In support of their contention they cite Rule 1028(c) of the Carrier's unilaterally promulgated Safety and General Rules for Employees, stating "No discipline will be noted against an employee's record without notice to the person affected, and an opportunity given for formal investigation and defense." However, the record reflects that the claimant was notified pursuant to Letter of Understanding dated July 13, 1976, reproduced in Appendix No. 11 of the current Agreement (see Superintendent Merritt's letter of August 5, 1988), of his termination pursuant to said Understanding. He was also advised therein of his contractual right to request an investigation within 20 days, if he so desired. There is nothing in the record to indicate the claimant exercised his right to request an investigation. Absent evidence of such a request

(and the transcript of investigation which would have resulted from such a request) the record is void of any alleged mitigating reasons for the claimant's unauthorized absence from duty from July 26 through August 5, 1988. The claimant's failure to request an investigation under these circumstances is tantamount to a plea of "no defense."

The Employees further contend that the Carrier failed to advise the claimant that accepting the 30 demerits issued on July 22, 1988 (for being absent from duty without proper authority July 11 through 15, 1988), could result in his seniority and employment being terminated. However, the "Discipline Waiver" signed by the claimant, accepting the 30 demerits in question, contains the following statement:

"I understand that assessment of the discipline stated above will result in my record having a balance of 60 demerits. I also acknowledge awareness that an accumulation of sixty (60) demerits subjects me to dismissal under provisions of applicable rules and/or operating bulletins that govern my occupation."

Under these circumstances, it must be concluded that the claimant was fully aware of the possible consequences when he signed for the 30 demerits in question.

From the record it appears that the claimant developed some kind of problem which prevented him from working for extended periods of time. Apparently, it was not the kind of problem he desired to discuss with his supervisor, or the kind of problem which might justify an excused absence, for there is no indication in the record that he sought authority for the absences in question. It is clear, however, that it was the claimant, not the Carrier, who triggered the contractual machinery which has been assembled by the Carrier and the Employees (through negotiation) for the purpose of addressing the problem(s) created by employees who do not report for duty as assigned for extended periods of time. It is also clear from the record that the claimant was aware when he accepted the 30 demerits issued July 22, 1988, that same would result in accumulation of excessive demerits, which subjects an employee to dismissal. Accordingly, from the record in this case, it can be logically deduced that the claimant "chose" dismissal.

When an individual chooses of his own free will to sever his relationship with a particular employer (either by resignation or by triggering self-executing contractual provisions, as in the instant case), neither the Carrier nor the Employees should feel compelled to do any more for that individual than have the parties to this dispute.

AWARD: Claim denied.

Michael Garmon
G. Michael Garmon, Chairman

C. J. Jones
Employee Member

L. Z. Pope
Carrier Member

Dated at Chicago, IL:

February 5, 1990