

AWARD NO. 11

Case No. 11

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:

"1. That the Carrier's decision to remove Texas Division Trackman R. J. Patterson from service was unjust.

2. That the Carrier now reinstate Claimant Patterson with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held January 29, 1990, continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable (sic.) evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, permanent removal from service is extreme and harsh discipline under the circumstances."

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.

On January 15, 1990, Carrier's Division Manager wrote the claimant notifying him of formal investigation to be held concerning the claimant's alleged failure to comply with instructions of Carrier's Medical Director pertaining to passing required medical tests, in possible violation of

Rules A, B, C, 1020, 1026 and 1028(b) of Carrier's Safety and General Rules for All Employees.

Following the investigation the claimant was found responsible for failure to provide a urine specimen free of all illegal drugs (and particularly marijuana), as instructed by Carrier's Medical Director, in violation of the rules cited. He was removed from service as a result thereof.

At the time claimant was cited for violation of the aforementioned rules, he was on medical leave of absence, account he had previously tested positive for marijuana, as a result of which he was subject to periodic testing for a period of two years.

During the investigation the claimant's representative requested that all charges be dropped due to the fact claimant had been furloughed since 1987, and he had not been issued a copy of the current rule book; claimant testified to the effect that the only rule book which he had been issued was issued April 15, 1976, however, a Carrier-witness introduced a copy of a form claimant had signed acknowledging receipt of a revised rule book effective January 1, 1978. The current rule book was effective October 29, 1989.

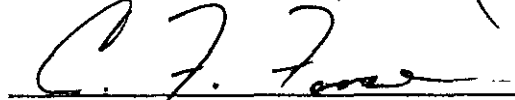
Absent a showing that the rules cited from the current rule book are essentially the same as those contained in previous rule books claimant had received, the claimant cannot properly be found to have violated the current rules. No such showing is contained in the record before the Board. Accordingly, Carrier was wrong in finding claimant responsible for violating rules from a rule book which he had not been issued.

Notwithstanding the aforementioned technical defect in the Carrier's decision, an implied contract exists between an employer and it's employees to the effect that employees are required to comply with clear and reasonable instructions; including, but not limited to instructions pertaining to examinations designed to determine whether or not an employee has taken drugs which might adversely affect his ability to perform his duties in a safe and satisfactory manner. The instructions involved in the instant case were certainly clear and reasonable - at least, there is no contention to the contrary contained in the record - and the claimant failed to comply with them.

Under the circumstances of this particular case and in view of the serious nature of the violation, the Board finds no basis for sustaining the claim.

AWARD: Claim denied.


G. Michael Garmon, Chairman


Employee Member


Carrier Member

Dated at Chicago, IL

May 14, 1990