AWARD NO. 12

Case No. 12

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 B. Bryant from service was unjust.

2. That the Carrier now reinstate Claimant Bryant with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held February 13, 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 February 5, 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 Carrier found claimant responsible for failure to provide a urine specimen free of all illegal drugs (and particularly cocaine) and failure to contact Carrier's Employee Assistance Counselor prior to January 26, 1990, as instructed by Carrier's Medical Director, in violation of the Rules cited. He was removed from service as a result thereof.

During the investigation the claimant testified to the effect he tried to get his doctor to give him the test while he was in the hospital, but he was refused. However, a Carrier-witness introduced a letter from Carrier's Employee Assistance Counselor, stating he had contacted the claimant's doctor and said doctor had indicated he would have been glad to perform the test at the hospital, if claimant had so requested; apparently, no such request had been made by the claimant.

Under the circumstances of this particular case and in view of the serious nature of the violation, claimant's removal from service was entirely appropriate.

AWARD: Claim denied.

Michael Garmon
G. Michael Garmon, Chairman

Employee Member

L L Pope
Carrier Member

Dated at Chicago, IL
May 14, 1990