

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:

"Carrier's decision to remove Kansas Division Trackman J. J. Flores from service, effective October 16, 1989, was unjust.

Accordingly, Carrier should now be required to reinstate the claimant with his seniority rights unimpaired and compensate him for all wages lost beginning October 16, 1989. (Carrier's file 11-680-120-852; Organization's file 130-1301-898)"

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 September 19, 1989, Carrier's Division Manager wrote Claimant notifying him of formal investigation to be held concerning Claimant's alleged absence from duty without proper authority on August 30, 1989, and September 8, 1989, in possible violation of Rule 1004 of Carrier's Safety and General Rules for All Employees.

Following the investigation, Carrier found Claimant responsible for violation of Rule 1004 and assessed his personal record with twenty (20) demerits for his responsibility in connection therewith.

As a result of the aforementioned assessment of 20 demerits against Claimant's personal record, on October 16, 1989, Carrier's Division Manager wrote Claimant, pursuant to Letter of Understanding dated April 16, 1979, notifying him that his seniority and employment were being terminated effective close of work that date, due to his accumulation of excessive demerits.

Testimony developed at the formal investigation indicates that on August 29, 1989, Claimant advised his Foreman that he wasn't feeling well and he might not be able to work the following day (August 30, 1989). Claimant did not report for work on August 30; he arranged for a fellow employee to notify his Foreman that he would not be at work because he was sick.

On September 8, 1989, Claimant showed up for work at about Noon; his assigned on-duty time was 7:00 AM. Claimant told his Foreman that his wife did not wake him up. (Claimant also alleged that he had tried to contact the Foreman by telephone, to no avail.) Claimant's Foreman would not let him work and sent him home.

It appears from the testimony developed at the formal investigation that Claimant had at least implicitly been given authority for his absence on August 30, 1989: His Foreman testified that when Claimant told him on August 29 that he was not feeling well and might not show up for work the following day, he said "okay." However, it also is clear from the testimony that Claimant did not have authority to be late for work on September 8, 1989.

The Board finds that the claimant was clearly absent without authority on the morning of September 8, 1989. In view of the serious nature of the violation, as well as Claimant's extremely poor discipline record (He had been disciplined on eleven prior occasions, most of which involved absences without authority), the assessment of 20 demerits in the instant case was entirely appropriate for Claimant's responsibility. Additionally, it appears from the record that the assessment of the 20 demerits in question resulted in Claimant's record standing charged with a total of 65 demerits, in view of which he was properly dismissed for accumulating excessive demerits, pursuant to Carrier's Rule 102 8-H and Letter of Understanding dated April 16, 1979.

Notwithstanding the Board's findings as set forth above, in a letter dated April 16, 1990, to General Chairman Wolfersberger, the Carrier indicates that the claimant's propensity to be absent from duty without authority is apparently related to a problem Claimant has with alcohol. However, subsequent to his removal from service on October 16, 1989, for accumulation of excessive demerits, Claimant has made no effort to seek help for his apparent alcoholism through the Carrier's Employee Assistance Program.

The existence of an Employee Assistance Program is indicative that the Carrier regards alcoholism as an

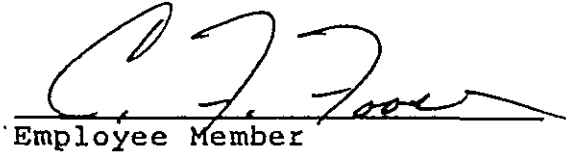
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illness. Accordingly, in deference to the Carrier's enlightened policy toward employees with this particular illness, as well as the claimant's relatively long service (approximately 12 years), the Board finds as follows: Upon receipt of a favorable recommendation from Carrier's Employee Assistance Counselor, the claimant will be reinstated, without pay for time lost and with 55 demerits standing on his record. Claimant must understand that his rehabilitation is a prerequisite to the aforementioned reinstatement; there can be no implementation of the award until Claimant first satisfies this requirement.

AWARD: Claim sustained, in part, subject to the contingency set forth in the findings above.

ORDER: Carrier is directed to reinstate Claimant within thirty (30) days from the date Claimant receives a favorable recommendation from Carrier's Employee Assistance Counselor.


G. Michael Garmon, Chairman


Employee Member


Carrier Member

Dated at Chicago, IL:

July 10, 1990