

AWARD NO. 23

Case No. 23

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 former Arizona Division Trackman P. Martin Sr., from service, effective April 9, 1990, was unjust.

Accordingly, Carrier should now be required to reinstate the claimant with his seniority rights unimpaired and compensate him for all wages lost from April 9, 1990. (Files 11-680-120-869/170-13A1-9019)"

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 March 16, 1990, Carrier's Division Manager wrote the claimant, in pertinent part, as follows:

"You are hereby notified to attend formal investigation in the Division Office, Winslow, Arizona, at 1:30 PM, Monday, March 26, 1990, concerning your alleged violation of Rules B and 1004, Safety and General Rules for All Employees, Form 2629 Standard, October 29, 1989, when you were allegedly absent without proper authority from March 2 through March 8, 1990, while employed as a trackman on the West Winslow Section, Arizona Division, so as to determine the facts and place responsibility, if any, involving possible violation of the aforementioned rules.

You may arrange for representation in line with the provisions of the agreement or schedule covering your working conditions, and you may likewise arrange for the attendance of any desired witnesses."

The investigation was postponed and eventually held on April 6, 1990, following which Carrier found Claimant

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responsible for violation of the rules cited and removed him from service as a result thereof.

The testimony of record established that the claimant was incarcerated in Gallup, New Mexico, for driving while intoxicated, during the period that he was absent from duty without proper authority; i.e., March 2 through 8, 1990.

The record contains the claimant's uncorroborated testimony to the effect that he called in on March 2 and got permission to be off on March 5, ostensibly to have his car repaired. However, according to the testimony of Carrier witnesses, Claimant did not call in until March 6, stating at that time that he had been picked up for DWI in Gallup, and he was in the Gallup jail.

On March 8, bond was posted for Claimant and he was released from jail. He called his supervisor (W. N. Smith, Assistant Superintendent Maintenance) who told him, in error, that he was being withheld from service pending investigation. When the error was discovered, several attempts were made (on March 8 and 9) to contact the claimant and advise him that he could return to work pending investigation, to no avail. Claimant was then written a letter advising him to contact the office immediately. He did so on March 15, at which time he was advised that he could report to work the following day, pending investigation. Claimant declined to return to work because his wife was in the hospital. Accordingly, the time which Claimant lost as a result of the error is confined to the period March 9 through 15, 1990, inclusive.

The Board finds that the claimant was properly found responsible for being absent from duty without authority during the period March 2 through 8, 1990, in violation of the rules cited. In view of the serious nature of the violation and Claimant's poor discipline record (demerits assessed on three occasions for being absent from duty without authority and a previous dismissal for accumulation of excessive demerits), Claimant's removal from service was commensurate with his responsibility in connection therewith.

Notwithstanding that stated above, Claimant shall be paid for time lost during the period March 9 through 15, inclusive, when he was withheld from service in error, pending investigation.

AWARD: Claim denied, except as set forth in last paragraph of Findings.

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ORDER: Carrier shall make the above-described payment
within thirty (30) days from the date of this Award.


G. Michael Garmon, Chairman


Employee Member


Carrier Member

Dated at Chicago, IL:

November 15, 1990