

AWARD NO. 38

Case No. 38

PUBLIC LAW BOARD NO. 4823

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

STATEMENT OF CLAIM:

- "1. That the Carrier's decision to issue a thirty (30) day actual suspension for alleged violation of Rules 1004 and 1007 of Safety and General Rules for All Employees and reduce it to a thirty (30) day deferred suspension if Claimant entered a rehabilitation program is unjust. The thirty (30) day deferred suspension could be activated anytime during a six (6) month period following the proposed corrective action if another incident happened involving the Claimant.
2. That the Carrier now expunge all suspensions and or deferred suspension, and compensate the Claimant for all wage loss and or made whole as a result of the Investigation and the imposed options beginning March 9, 1992 and continuing to April 6, 1992."

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.

The evidence of record indicates that an investigation was held on February 25, 1992, to "... develop the facts and place responsibility, if any, concerning possible violation of Rules A, B, L, 1004, 1007, and 1018, Safety and General Rules for All Employees, Form 2629 Standard, effective October 29, 1989, in connection with report that you (Claimant D. H. Johnson) were absent without proper authority on Thursday, January 30, 1992; report that you (Claimant Johnson) instructed Machine Operator R. C. Tannehill to indicate on time books that you (Claimant Johnson) were on personal day on January 30, 1992, without authority; report alleging that you (Claimant Johnson) falsified information concerning this to roadmaster; and report that you (Claimant Johnson) were arrested for public intoxication at 12:40 AM January 30, 1992, while assigned as foreman on Gang 27627 headquartered at Gainesville, Texas." (Paranetical identification added.)

Pursuant to the evidence and/or testimony developed in the investigation, the Investigating Committee (with the claimant's representative dissenting) issued the following Decision:

"That Foreman D. H. Johnson be issued a 30-day actual suspension for his violation of Rules 1004 and 1007 of Safety and General Rules for All Employees, Form 2629 Standard effective October 29, 1989. However, in the event Foreman Johnson enters a rehabilitation program approved by the Santa Fe Railway employee assistance counselor within fifteen (15) days of the date of decision letter and presents evidence of successful completion of said program, the decision of 30 days actual suspension will be reduced to 30 days deferred suspension."

The premise for the Employees' claim in the instant case is that the discipline assessed was unjust and that the Carrier did not introduce substantial, credible evidence that proved the claimant violated the rules cited.

After a thorough review of the transcript and exhibits, the Board has determined that the claimant (and Carrier employee N. L. Cronister) were incarcerated during the early morning hours of January 30, 1992, Claimant Johnson being charged with public intoxication. He (Claimant Johnson) was released at approximately 4:00 AM that date. At approximately 5:00 AM on January 30, he called Machine Operator Tannehill and instructed him to take care of the gang. On the morning of January 31, 1992, at approximately 8:00 AM, the claimant instructed Mr. Tannehill to show he (Claimant Johnson) and Mr. Cronister on the time sheet as taking a personal day on January 30. All of these facts were substantially confirmed by Claimant Johnson in his testimony.

It is also clear from the testimony of record that the claimant did not have permission to be absent on January 30, 1992; he so admitted. Likewise, the claimant did not have permission to take a personal day on January 30, 1992. The fact that the claimant was paid for a personal day on January 30 does not constitute evidence - circumstantial or otherwise - that his absence was authorized; it clearly was not.

While the claimant was charged with numerous and sundry rule violations, he was only found responsible for violating Rules 1004 and 1007. The claimant's absence from duty without authority, including failure to obtain permission in advance to take January 30 as a personal day, was clearly contrary to Rules 1004 and 1007, and a serious violation of said rules. In view of the serious nature of the violation(s), the discipline assessed was extremely lenient for the claimant's responsibility in connection therewith.

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For the reasons previously set forth in these Findings, the Board concludes that the Employees' claim in the instant case is without merit.

AWARD: Claim denied.

*G. Michael Garmon*  
G. Michael Garmon, Chairman

*C. F. Fosse*  
Employee Member

*Lyle L. Pope*  
Carrier Member

Dated at Schaumburg, IL:

*June 5, 1992*