

AWARD NO. 5

Case No. 5

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. The the Carrier's decision to remove New Mexico Division Machine Operator B. C. Payne from service was unjust.

2. That the Carrier now reinstate Claimant Payne with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held November 29, 1989, 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 November 15, 1989, the claimant was notified of a formal investigation to be held on November 29, 1989, concerning a report that he failed to comply with instructions issued by the Carrier's Medical Director in violation of Rules, A, B, C, 1000, 1007, and 1020, Safety and General Rules for all Employees.

The investigation was held as scheduled, but the claimant did not attend. Following the investigation, he was found responsible for violation of the rules cited in the notice of investigation and was removed from service for his responsibility in connection therewith.

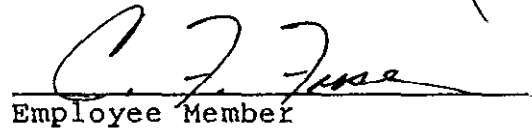
The Employees contend that the claimant's removal from service was unjust, that the Carrier did not introduce substantial, credible evidence that he violated the rules enumerated and, even if he violated the rules enumerated,

permanent removal from service is extreme and harsh discipline under the circumstances.

The claimant's failure to attend the investigation, absent some evidence of mitigating circumstances justifying his absence, undermines the contentions of the Employees; it is tantamount to a plea of no defense. In view of the seriousness of the violation and after a thorough review of the record before it, the Board finds that the claimant was properly found in violation of the rules cited and that his removal from service was an appropriate measure of discipline for his responsibility in connection therewith.

AWARD: Claim denied.

  
G. Michael Garmon, Chairman

  
Employee Member

  
Carrier Member

Dated at Chicago, IL:

March 2, 1990