

AWARD NO. 6

Case No. 8

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 Illinois Division B&B Carpenter R. E. Mayers from service was unjust.

2. That the Carrier now reinstate Claimant Mayers with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held December 5, 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 September 7, 1989, Carrier's Division Manager wrote the claimant as follows:

"This is to advise you that your seniority and employment in the Maintenance of Way Department have been terminated, this date, due to your being absent without proper authority on August 22, 23, 24, 28, 29, 30 and 31, 1989, and not being on an authorized leave of absence per letter of Understanding dated July 13, 1976.

You may, within 20 days of this letter, if you so desire, request you be given an investigation under Rule 13 of the current Agreement."

On September 23, 1989, the claimant requested an investigation. The investigation was initially scheduled for October 24, 1989, but was postponed several times and

eventually held December 5, 1989. Claimant was charged with being absent from duty without proper authority on the dates listed in the Division Manager's letter of September 7, supra, in possible violation of Rules A, B and 1004 of the Safety and General Rules for all Employees. Following the investigation he was found responsible for being absent without property on the aforementioned dates, in violation of Rule 1004. For his responsibility he was removed from service.

During the investigation claimant admitted to having been absent from duty without proper authority on the dates in question, but testified to the effect that he was on a medication that prevented him from contacting his supervisor until August 31, 1989. He alleged that the medication was for pain which he suffered due to an alleged on-duty back injury sustained May 9, 1989.

Claimant's supervisor testified that when he returned the claimant's call on September 1, 1989, Claimant advised him that his back was hurting and indicated he had hurt it while helping his sister move and while sheetrocking. Claimant advised his supervisor at that time that his sister had tried to contact him (Claimant's supervisor). During the investigation the claimant reiterated that his sister had tried to contact his supervisor and contended that Carrier's Agent at Marceline gave her a wrong number.

The burden of proof is on the Carrier to establish an employee's responsibility for a rule violation. In this case, the claimant has admitted that he was absent from duty without proper authority on the dates in question; a violation of Rule 1004. Accordingly, the Carrier's burden of proof has been satisfied.

It is the claimant (and the Employees) who contend(s) that his absence from duty without authority are outweighed by mitigating factors. This being the claimant's (and the Employees') contention, he (and the Employees) assume(s) the burden of proof to establish the existence of mitigating factors sufficient to warrant setting aside the discipline.

We can assume for argument's sake that the claimant did have back pain during the period in question, for which he was taking medication, and that said medication caused the claimant to be drowsy. However, the claimant's contentions to the effect that he was unable to contact his supervisor for a period of eight or nine days because of the debilitating effect of said medication are so incredible on their face that, without supporting evidence or corroboration by a credible third party, they can be considered as nothing more than self-serving, unsupported allegations. Absent such support and/or corroboration as concerns the effect of the medication, the claimant's

allegations concerning his sister's alleged attempts to contact his supervisor are meaningless. Claimant (and the Employees), therefore, has (have) not satisfied his (their) burden of proof in the instant case.

Absence from duty without proper authority is a serious offense. In consideration of this fact, and after a thorough review of the entire record in this case, the Board finds that the claimant was properly found responsible for violation of Rule 1004 and his removal from service was an appropriate measure of discipline for his responsibility in connection therewith.

Notwithstanding the above findings, in view of the claimant's relatively long service and good discipline record, it appears that the discipline has served its purpose. Accordingly, the Board finds that, upon presentation of a release from his doctor to return to unrestricted duty, the claimant will be reinstated without pay for time lost.

AWARD: Claim sustained in part in accordance with the findings, above.

ORDER: Claimant's seniority will be reinstated immediately upon presentation of a release from his doctor indicating that he is able to return to unrestricted duty. He will be allowed to report for active duty promptly following release by the Carrier's Medical Director.

  
G. Michael Garmon, Chairman

  
Employee Member

  
Carrier Member

Dated at Chicago, IL:

March 2, 1990