

PUBLIC LAW BOARD NO. 2774

Award No. 11  
Case No. 18

PARTIES Brotherhood of Maintenance of Way Employees  
TO and  
DISPUTE The Atchison, Topeka & Santa Fe Railway Company

STATEMENT "1. That the Carrier violated the effective Agreement when on April 22,  
OF CLAIM 1980 they discharged Machine Operator M.J. Cornejo, said discharge  
being arbitrary and without benefit of due process.  
2. That the Carrier shall now reinstate Mr. M.J. Cornejo to his former  
position with seniority, vacation and all other rights unimpaired  
and that he be compensated for loss of earnings suffered account of  
Carrier's improper action."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant herein, employed as a Trackman on November 4, 1975, was notified by letter dated March 12, 1980 to attend a formal investigation on March 21, 1980. He was charged with allegedly dishonest conduct for allegedly burglarizing two business establishments on August 11, 1979 in Shattuck, Oklahoma which action involved a possible violation of Rule 752 (C) of the Rules of Maintenance of Way Instructions. That Rule provided as follows:

"Employees must not be dishonest, immoral or vicious. They must conduct themselves in a manner that will not bring discredit on their fellow employees or subject the railroad to criticism or loss of good will."

At the request of Claimant the investigation, which had been scheduled for March 21, 1980 was postponed to April 21, 1980. Claimant was notified of the postponement by

letter dated March 20, 1980 (certified and receipted for by a member of Claimant's family) and also verbally notified of the investigation by his father, Roadmaster Cornejo. The investigation was held on April 21, 1980 and Claimant was dismissed from service for his alleged infraction.

Petitioner insists that Claimant was unable to be present at the hearing since his father had sent a wire dated April 11 indicating that he was in the hospital involving some surgery which related to a previous accident. Petitioner claims that without the Claimant's knowledge the investigation was carried out on April 21 on a unilateral basis, thus depriving Claimant of an opportunity to defend himself. Furthermore, Claimant did not receive a copy of the stenographic report until some forty-five days following the investigation.

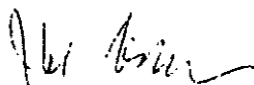
Evidence presented by the Carrier at the investigation indicated that Claimant had plead guilty to burglary in the second degree for allegedly breaking into two business establishments in a small town on the dates indicated above. He was convicted of the felony and received a two year suspended sentence in addition to making restitution of the amount burglarized. Furthermore, Carrier submitted evidence of newspaper reports indicating the criminal activities of Claimant.

On the face of it, it is apparent that Claimant was aware of the postponed hearing and of it being held on the date indicated by Carrier's submission. Although Claimant requested a postponement of the hearing for the initial date on which it was set, he did not do so with respect to the second date. The telegram from his father to another Carrier official did not request a postponement nor did it indicate that it was on behalf of Claimant on its face. Thus, Carrier was perfectly justified in proceeding with the investigation and Claimant was absent therefrom at his peril. Thus, this action in itself, since there was due notification and no request for a postponement, was not per se, a violation of the Agreement.

With respect to the evidence adduced at the investigation, there is no doubt but that Claimant pleaded guilty to a criminal offense which was a felony. Thus, Carrier had established at the investigation that Claimant was in violation of its rules (cited above) and the penalty imposed was justified. The Board concludes that there can be no question but that Carrier has satisfied its burden of proof in this case and there are no mitigating circumstances indicated which would persuade the Board that there should be any modification of the penalty imposed.

AWARD

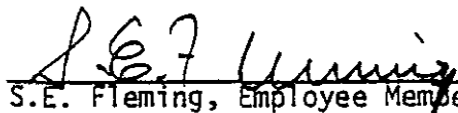
Claim denied.



I.M. Lieberman, Neutral-Chairman



G.M. Garmon, Carrier Member



S.E. Fleming, Employee Member

January 16, 1982  
Chicago, IL