

PUBLIC LAW BOARD NO. 2774

Award No. 118
Case No. 118

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
The Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the dismissal of Bridge and Building Mechanic Peter Barela was without just and sufficient cause and in abuse of discretion.
2. That the claimant, Peter Barela, be returned to the service of the Carrier with seniority and all other rights restored unimpaired and that he receive compensation for all wage loss suffered."

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.

The record indicates that claimant herein was absent from February 28, through March 3, 1983. Following his return to work, he waived his right to a formal investigation, admitted his responsibility and accepted twenty demerits. Subsequently, he was absent without authority from March 21 through March 24, 1983, and, again, waived an investigation and accepted the assessment of twenty demerits. Based on the two incidents, the forty demerits which claimant signed for raised his total of demerits to eighty. Based on the fact that this was in excess of the number requiring dismissal under the Brown System, claimant was dismissed from service on March 28, 1983.

Under the Carrier's demerit systems, sixty demerits is sufficient for purposes of dismissal. It is clear in this instance that claimant, because of his absent-without-authority status, agreed to sign waivers and accepted forty demerits. Even if petitioner is correct in that

- 2 -

twenty demerits for each incident may have been excessive, it is obvious that even with a reduced number of demerits, claimant would have exceeded or been at the sixty-demerit level and, hence, have been subject to termination in any event. Based on the facts, there is no mitigating circumstance which would warrant changing Carrier's determination. The claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



C. F. Foose, Employee Member



G. M. Garmon, Carrier Member

Chicago, IL
December 17, 1984