

PUBLIC LAW BOARD NO. 2774

Award No. 119

Case No. 119

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 Trackman S. Giancinto was without just and sufficient cause and in abuse of discretion.
2. That Mr. S. Giancinto be returned to his former position with the Carrier with seniority and all other rights restored unimpaired and that he be compensated for all wage loss suffered resulting from the erroneous dismissal."

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 claimant was employed by Carrier in September of 1975 as a Trackman. As of October 9, 1982, his record was clean with no demerits outstanding. On December 8, 1982, claimant suffered from a toothache and was off for one day. He signed for twenty demerits and waived the right to a formal investigation for that day. Subsequently, on December 14, 15, 16 and 17 he was again off due to having his teeth extracted and, upon returning to work, waived his rights again to an investigation and accepted thirty demerits. Subsequently, on January 20, 1983, the Assistant Roadmaster noted that claimant was not wearing his safety glasses as he had been instructed to do. As a result of that discussion with the Assistant Roadmaster, claimant was summoned to an investigation, resulting in him being found guilty of not wearing his safety glasses and was assessed an additional ten demerits.

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Those ten demerits were enough, together with the fifty previously indicated, to warrant his dismissal under the Brown System.

Carrier argues that claimant was properly found responsible for his failure to wear his safety glasses while performing his duties and the assessment of ten demerits was appropriate. Carrier notes further that he had been warned on several prior days for the same infraction but had not conformed at the time the demerits were triggered. For that reason, Carrier insists that the termination in accordance with the demerit system was appropriate.

Petitioner states that the system of demerits was not intended to be used as a tool to dismiss employees by their accumulation of demerits because of a small infraction over time. In this instance, the dismissal triggered by claimant's failure to wear safety glasses did not warrant the ultimate penalty of dismissal, according to the Organization. Furthermore, the Organization argues that claimant's acceptance of the prior fifty demerits was inappropriate because he did not realize the significance of those demerits and, indeed, because of his medical problems, should not have been issued any for the particular days. This lack of knowledge should not have been used by Carrier for the purpose of misleading and dismissing the claimant, according to the Petitioner.

The Board, while not desiring to tamper with the demerit system, believes that in this instance the particular penalty imposed was excessive and unwarranted. It is clear that claimant was guilty of the infraction charged and should have been disciplined. However, dismissal, under all the circumstances and in particular in view of the nature of the earlier infractions, was harsh and in abuse of discretion on the part of Carrier. For that reason, the Board believes that it would be appropriate to return Mr. Giancinto to his former position with all rights unimpaired but with no compensation for time lost. On his return, he shall carry with him forty demerits. In addition, it should

be noted that this opportunity for Mr. Giancinto will be considered his final chance to conform to the rules. If he fails to conform to the rules, his position will no longer be tenable.

AWARD

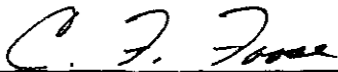
Claim sustained in part; claimant will be returned to his former position with all rights unimpaired but without compensation for time lost. The additional conditions will be imposed as indicated in the findings above.

ORDER

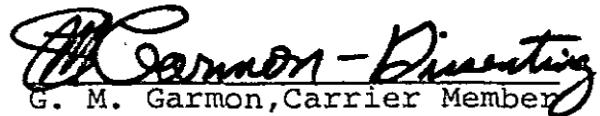
Carrier will comply with the award herein within thirty (30) days from the date here.



I. M. Lieberman, Neutral-Chairman



C. F. Foose, Employee Member



G. M. Garmon, Carrier Member

Chicago, IL

December 17, 1984