

PUBLIC LAW BOARD NO. 2774

Award No. 121
Case No. 121

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the assessment of ten (10) demerits to Trackman Guadalupe Mora without first according claimant a fair and impartial investigation was in violation of the agreement between the parties and in abuse of discretion.
2. That Mr. Guadalupe Mora be returned to his former position with his seniority and all rights restored unimpaired and that he be compensated for all wage loss suffered resulting from the violation referred to in Part 1 hereof."

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 was removed from service for accumulation of excessive demerits pursuant to the understanding between the parties dated April 16, 1979, without an investigation. Claimant had been absent from duty on Friday, April 29, 1983, and waived his right to a formal investigation and accepted ten demerits. Petitioner insists that claimant felt he had a valid reason for being absent on the day in question and would not have waived his right to a formal investigation had he been fully apprised of the consequences of signing the waiver. The Organization argues that claimant repeatedly asked his supervisor whether signing the waiver would result in any termination and was never told that it would. The Organization argues further that had the Carrier not coerced claimant into accepting the ten demerits and had he been accorded an impartial hearing, he would have been able to defend himself against

Carrier's accusations and establish the rationale for being absent on the day in question.

The essence of this dispute is contained in Award No. 19 of this Board. In that case, this same claimant was the subject of a dismissal by Carrier and, because of absences and the accumulation of the critical number of demerits, this Board held in that award in the final paragraph as follows:

"In the light of claimant's long record of similar types of infractions, in determining as this Board shall, that he must be returned to service, claimant should take note that this may be his last opportunity to keep his job. He shall be returned to work with 55 demerits and must be aware that this obligation to report to work on a regular basis is a paramount aspect of his work relationship."

That award is dated November 10, 1982.


Based on the rationale expressed above, and the fact that claimant is again arguing that he did not know the meaning of the signing of the waiver, the Board cannot accept this rationalization. When claimant signed the waiver on May 23, 1983, only a few months following the issuance of the Board's decision cited above, he was well aware of the consequences of signing waivers. He was returned to work with 55 demerits and only five months later was again absent without authority. The arguments advanced by petitioner in this instance must be rejected in view of claimant's history and the clear mandate of the original award dealing with his absenteeism. The claim must be denied.

AWARD

Claim denied.


I. M. Lieberman, Neutral-Chairman


C. F. Foose, Employee Member


M. Garmon, Carrier Member

Chicago, IL 12-17-84