

PUBLIC LAW BOARD NO. 2774

Award No. 130
Case No. 130

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the current agreement when it dismissed Bridge & Building Mechanic, Mr. D. R. Martinets, without just and sufficient cause, said action being excessive and in abuse of discretion.
2. That claimant shall now be returned to his former position with seniority and all other rights restored unimpaired and with compensation for all 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.

Claimant had been employed by Carrier in June of 1980. Following an investigation, claimant was assessed twenty demerits resulting in an accumulation of sixty demerits and, thus, his dismissal on December 13, 1983. The demerits were assessed since he was absent without authority on October 26, 1983. At the hearing, the evidence indicated that claimant had been incarcerated in the jail the night before his absence causing him to miss work. Furthermore, according to the testimony, his father had attempted to call the General Foreman but had not been able to reach him indicating that claimant would not be at work. Claimant was apparently released from jail on the afternoon of the day on which he was absent from work.

Carrier argues that claimant was absent without proper authority on the day in question and the assessment of twenty demerits was hardly excessive under the circumstances. Carrier notes that all of his prior demerits had been caused by

being absent without authority as well. The twenty demerits resulted in him accumulating sixty demerits which, under the disciplinary system, is sufficient to cause dismissal. Furthermore, according to Carrier, since the reason for his absence on the night in question was because he was incarcerated, the decision to award the demerits was appropriate and the dismissal properly followed.

Petitioner insists that the claimant herein was not charged or found guilty of any crime and the fact that he was incarcerated was not within his control. Furthermore, according to Petitioner, claimant had attempted in every possible manner to have his father notify Carrier officials that claimant would not be able to cover his assignment on October 26, 1983. The Organization argues that since the circumstances herein were not under the control of claimant, he should not have been assessed twenty demerits and, therefore, the claim should be sustained.

There have been many instances in which Boards have dealt with the consequences of employees being incarcerated as it affects their attendance. Boards have generally felt that an employee must bear responsibility for whatever actions caused him to be arrested in the first place. Obviously certain circumstances must be considered which would mitigate this conclusion. In the instant dispute, the Board notes that claimant refused to indicate the nature of his problems with the police at the investigative hearing. There is no evidence to indicate the reason that he was arrested in the first instance. The Board, therefore, views this circumstance as being controlling in that claimant must bear the responsibility for his actions, and the fact that he was incarcerated and no form of criminal charge was levied against him is not sufficient to exonerate him in terms of his attendance. In view of his record, Carrier was within its rights in awarding both the demerits and then finally the dismissal in view of the excessive demerits accumulated. The claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



E. H. Garmon, Carrier Member



C. F. Foote, Employee Member

Chicago, Illinois

April 30, 1985