

PUBLIC LAW BOARD NO. 2774

Award No. 132

Case No. 132

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the dismissal of Trackman H. Tsosie was without just and sufficient cause and in abuse of discretion and in violation of the current agreement.
2. That Mr. H. Tsosie now be reinstated to his former position with seniority and all other rights restored unimpaired and with compensation for all time lost."

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.

At the time of the incident involved herein, claimant had been employed by Carrier as a trackman for almost ten years. Following a hearing which ended on June 10, 1983, claimant was found guilty of absenting himself without proper authority commencing May 9, 1983, and was dismissed from service. The investigation record indicates that claimant had become ill, had been transferred to a new location with his gang and was at home on his reservation ill on the day in question. On the Indian reservation there were no means of communication available for him to request time off due to his illness. Carrier maintains that in view of the serious nature of the violation, as well as claimant's past performance which also involved discipline for being absent without authority, the discipline of dismissal was entirely appropriate.

The record is quite clear that claimant was indeed absent for the period from May 9 to May 20, 1983, without authority. Therefore, he was guilty of the charges leveled against him. However, as the Board views it in the context of the entire circumstance, Carrier was aware of the nature of communication problems

which its employees who resided on the particular Indian reservation were confronted with. In view of the particular circumstances and claimant's long service with Carrier, it is believed that the penalty in this instance may have been harsh and unnecessarily severe. For that reason, claimant will be offered reinstatement to his former position with all rights unimpaired but without compensation for time lost. It must be understood, however, that this will be his last opportunity to conform to Carrier's rules. Carrier has a right to know when employees are not coming to work and to have control of its work force. Claimant must conform to those normal and reasonable rules.

AWARD

Claim sustained in part; claimant will be offered reinstatement to his former position with all rights unimpaired but without compensation for time lost.

ORDER

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


I. M. Lieberman, Neutral-Chairman


G. M. Garmon, Carrier Member


C. F. Foote, Employee Member

Chicago, Illinois
April 30, 1985