

PUBLIC LAW BOARD NO. 2774

Award No. 144
Case No. 144

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 Mr. F. A. Parra on the basis of unproven charges, said action being in abuse of discretion.
2. The Carrier will now be required to reinstate Mr. F. A. Parra with seniority and all other rights restored unimpaired and compensated for any 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.

Claimant was employed by Carrier as a Trackman on the New Mexico Division on April 11, 1977. On November 4, 1982, claimant suffered an extremely serious on-the-job injury. He remained off-duty following that injury. On November 3, 1983, one year later, Carrier's Division Engineer informed claimant by letter that he was to fill out a leave of absence request and return it to the Division Engineer, along with a statement from his doctor supporting the request for an extension of his leave of absence. The record indicates that claimant took the form furnished by Carrier to his attending physician and requested the doctor support his statement. There also appears, for reasons which are unexplained, the initial form requesting a leave of absence which stated that it was to begin on July 20, 1983 (supplied by Carrier). On January 12, 1984, the next communication between the parties occurred at which time Carrier addressed a letter to claimant informing him that his leave of absence had expired on November 4, 1983 and, as a result, his seniority had been terminated. Claimant thereupon requested a formal investigation and furnished the Carrier with documented evidence that he had been under the physician's care since July 20, 1983, and had last been seen in the physician's

office on January 24, 1984 and thereafter. The formal investigation was held on July 20, 1984, and Carrier reaffirmed its decision to terminate claimant for his failure to file the appropriate documents.

Petitioner insists that claimant was totally disabled and under the provisions of Rule 22(b), Paragraphs 3 and 6, he was exempt from the requirement that Carrier attempted to enforce with respect to leaves of absence. In support of its position, petitioner cites Rule 22(b) in pertinent part as follows:

"No formal leave of absence will be required to cover the period of time which the attending physician recommends that the employee be allowed to remain off duty, but the recommendation must be presented to the employee's supervisor within the period covered by the doctor's recommendation."

In addition, according to petitioner, Paragraph 6 of the Rule fits squarely within the circumstances of this dispute and provides as follows:

"(6) An employee whose continuous absence continues beyond one year will be required to submit a request for a formal leave of absence for the entire period (s),"

Thus, petitioner insists that claimant complied with the rules of the agreement when he made a formal request for his leave of absence. In addition, it is apparent that Carrier, in the correspondence between the parties, recognized the fact that no action was required by claimant until he had been off work for over one year. Furthermore, Carrier recognizes the rule does not contain a time limit in which claimant must act to be in compliance with the rule. This is particularly true in circumstances such as that herein, according to petitioner, when there was a work-related injury as serious as that involved in this instance.

Carrier simply insists that claimant failed to comply with the rules and request a formal leave of absence after having been off work continuously for over a one-year period. This was sufficient to remove him from service for his responsibility with this infraction.

It is apparent that while claimant may not have complied with the letter of the rule in terms of the time he requested his last leave of absence, he in good faith

conformed to every request made by Carrier with respect to the paper work for the absence. There is no explanation for some of the dates involved in the transaction (the July 7, 1983, request for a leave) prepared by Carrier. Furthermore, it is also quite clear that Carrier bears responsibility for the particular situation herein when claimant's absence was caused by a work-related injury of which Carrier was well aware. It is apparent from an analysis of the record that Carrier was incorrect in its determination to terminate claimant. Under the particular circumstances of this matter, the record simply does not support such a conclusion. For that reason, claimant will be offered reinstatement to his former position with all rights unimpaired, subject, of course, to passing a return-to-work medical examination. Any loss of pay, if in fact it occurred, shall not be reimbursed by Carrier, however, in view of claimant's responsibility.

The Board has been informed that in a court action claimant has alleged that he is permanently disabled and can never return to work. In view of that action, the Board will order its remedy to be held in abeyance until the court matter is finally resolved. Only if the court does not find that claimant is permanently disabled will Carrier be ordered to offer him reinstatement.

AWARD

Claim disposed of in accordance with the findings above.



I. M. Lieberman, Neutral-Chairman



C. F. Foote, Employee Member



G. M. Garmon, Carrier Member

Chicago, Illinois

February 6, 1986