

PUBLIC LAW BOARD NO. 2774

Award No. 145

Case No. 145

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the Carrier's decision to dismiss Machine Operator, Mr. B. R. Lawson, on April 2, 1984, without according him a fair and impartial hearing and on the basis of unproven charges was in violation of the agreement, said action being capricious, unduly harsh and in abuse of discretion.
2. That claimant now be reinstated with seniority and all other rights restored unimpaired, his record shall be cleared of all charges levied against him and he shall be compensated for all 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 had a seniority date of December 14, 1972. He was employed as a Machine Operator. On November 15 and 16, 1983, claimant was operating a scarifier. It had been the policy on his gang for operators to remain at work beyond the normal quitting time at the request of the foreman for purposes of assisting the mechanic in making necessary repairs to their machines. The record indicates that on November 15, 1983, the foreman requested claimant to remain at work for the purpose of assisting the mechanic in making some type of repairs to the scarifier. At that time claimant told the foreman that he was car-pooling and it would be impossible for him to stay after working hours. The foreman accepted this excuse and told claimant, however, to make arrangements to remain at work on the following day for the same purpose. On the following day, claimant again protested the assignment and was told that he was required to remain and

do the work or face the consequences. Claimant left and another employee was called upon to assist the mechanic in the necessary repair work. Subsequently, claimant was charged with insubordination and following an investigation he was dismissed. The record also indicates that claimant, during his tenure with the company, had been assessed approximately 170 demerits and one prior discharge (returning to work on a leniency basis).

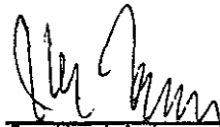
Petitioner argues that, first, the hearing in question was not fair or impartial. In addition, it is maintained that the foreman did not have work which was imperative to be performed on the machine on November 16. Based on these facts, the Organization argues that the foreman willfully devised a plan whereby claimant would be forced to jeopardize his seniority and relationship by not remaining at work on an overtime basis. This plot was also participated in by the hearing officer, according to the Organization.

Carrier argues that claimant's conduct on November 16 was an obvious violation of the rules and was insubordinate. In view of the serious nature of the violation and claimant's poor past record, Carrier states that his removal from service and dismissal was wholly appropriate.

An evaluation of the transcript of the investigation does not reveal any material which supports petitioner's contention that the hearing in question was improper or unfair in any respect. Furthermore, the evidence is clear that claimant did, indeed, refuse a direct order (following a prior order which he evaded on the 15th) to work overtime and on November 16. This is unequivocal and unrebutted. The question of the type of repair work to be accomplished and whether the foreman had significant work to be done or not is immaterial, as the Board views it. The fact of the matter is that claimant was required to do the work on an overtime basis and simply refused. This is insubordinate conduct which should not and cannot be tolerated. In view of claimant's record and the fact that he was aware that he would be held accountable for his actions by the foreman's statements to him, there is no doubt but that the finding of guilt was an appropriate one supported by ample testimony. Additionally, based on his record, the dismissal, indeed, was the only alternative available to Carrier under the circumstances. For the reasons indicated, therefore, the claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



C. F. Foote, Employee Member



G. M. Garmon, Carrier Member

Chicago, Illinois

February 6, 1986