

PUBLIC LAW BOARD NO. 2774

Award No. 148
Case No. 148

PARTIES
TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM :

1. That the Carrier's decision to dismiss Mr. L.E. Legge was in violation of the current Agreement, excessive, unduly harsh and in abuse of discretion.
2. The Carrier will now be required to reinstate Mr. L.E. Legge to his former position with seniority and all other rights restored, unimpaired and compensate him for all wage loss suffered during the interim period."

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.

The record indicates that Claimant was arrested while driving to work on April 10, 1985. Being unable to post bond, he was held for some 5 days and then he was released on bond. By letter dated April 16, 1985, Claimant was informed that his seniority and employment with Carrier had been terminated due to being absent from duty without permission.

Following an investigation held on May 13, 1985, Carrier reaffirmed its decision to terminate Claimant. In the course of the investigation the evidence was clear that Claimant was absent without proper authority on the dates in question and the reason for his absence was admittedly his being incarcerated.

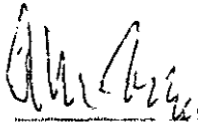
The Petitioner believes that Claimant's nine years of service and prior attendance record should be considered in the assessment of the discipline in this matter. Carrier, on the other hand, indicates that Claimant's past record contains information with respect to ten prior occasions in which Claimant was disciplined including seven disciplinary assessments for being absent without proper authority. In addition, he had been dismissed from service on two prior occasions and subsequently reinstated.

Upon examining the record in this case it is apparent that Claimant was accorded a proper investigation and the facts at that investigation justified Carrier's conclusion that Claimant was guilty of charges. As the parties both know, incarceration has long been found to be an inadequate reason for absenteeism under any circumstances. In addition, in this instance, Claimant's prior unsatisfactory record supports Carrier decision that termination was the only available sensible recourse under

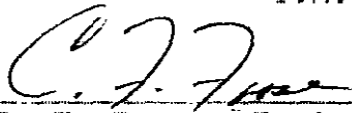
The circumstances. The Claim must be denied.

WITNESSES

Claim denied.



I.M. Lieberman, Neutral Member



C. F. Foote, Employee Member



G.M. Garmon, Carrier Member

Chicago, Illinois

January 21, 1988