

PUBLIC LAW BOARD NO. 2774

Award No. 149

Case No. 149

PARTIES
IN 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 Trackman L.A. Sena for being absent without proper authority while Claimant was off due to illness was in violation of the Agreement, without just and sufficient cause and an abuse of discretion.
2. Carrier further violated said Agreement when it failed to accord Claimant a fair and impartial hearing pursuant to Rule 13 when it became knowledgeable that Claimant was off duty due to illness and not absent without authority.
3. The Carrier will now be required to clear Claimant's record of all charges and reinstate him to his former position with seniority and all other rights restored unimpaired, with compensation 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.

The record indicates that on May 23 Claimant allegedly had an

accident and fell while riding an escalator. He contacted his foreman the following day and/or the following week (unverified information) advising the foreman of his problem and remained off work for that week. He remained off work on the week starting June 3, 1985 through and including the 3rd, 4th, 5th, 6th, 7th and 10th of June of 1985 without any contact with Carrier. According to his statement, Claimant received medical attention finally, only on May 30, 1985 during which time it was found that he had fractured three ribs. Carrier addressed a letter to him dated June 11, 1985, informing him that he had been absent without proper authority for over five days and indicated to him that under the letter dated July 13, 1976, he had the right to request an investigation within 20 days pursuant to Rule 13.

Carrier received a letter from Claimant on July 20, 1985 requesting an investigation. The request for investigation was denied since it was received beyond the 20 day period specified.

Carrier takes the position that Claimant was properly removed from service in accordance with the Letter of Understanding dated July 13, 1976. Furthermore, according to carrier, Claimant's failure to request an investigation within the prescribed 20-day time limit invalidated any claim for further consideration or

reinstatement. In support of its position, Carrier also relies in part on a decision in Public Law Board 4021, Award No. 27, under similar circumstances (involving the same parties). Carrier also notes that Claimant's past record included ten prior disciplinary situations, six of which involved absence without authority and two prior dismissals for violation of Rule 6 which further supported its conclusion.

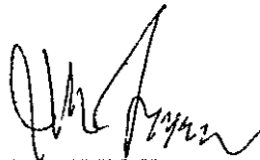
The Petitioner argues that Carrier deliberately violated the Agreement and refused to allow Claimant a fair and impartial hearing as provided for in Rule 13. It is asserted by the organization that Claimant did not receive the letter as rapidly as he normally would have since he was in the hospital at the time and his father signed for the certified letter and failed to deliver it to him. Under the circumstances, Carrier erred in not permitting Claimant the benefit of an investigation.

As the Board views it, and as it has been held previously, the Rule, in this instance the Letter of Understanding dated July 13, 1976, is self-executing. In this instance its application is appropriate in view of the fact that Claimant was absent for six days without proper authority and furthermore did not request an investigation within the prescribed period of

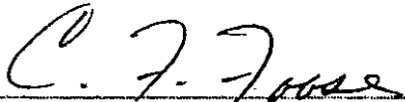
time. Under all the circumstances and in view of Claimant's prior disciplinary problems, Carrier was correct in its conclusions and the Claim must be denied.

WARD

Claim denied.



I.M. Lieberman, Neutral Member



C. F. Foose, Employee Member



G.M. Garmon, Carrier Member

Chicago, Illinois

January 21, 1988