

## PUBLIC LAW BOARD NO. 2774

Award No. 184  
Case No. 184

PARTIES            Brotherhood of Maintenance of Way Employees  
TO                         and  
DISPUTE:           Atchison, Topeka and Santa Fe Railway Company

STATEMENT  
OF CLAIM:

"1. That the Carrier violated the current Agreement when it dismissed Mr. L. D. Anderson. Said action being excessive, unduly harsh and in abuse of discretion.

"2. That the Carrier reinstate Claimant to his former Carrier position with seniority and all other rights restored unimpaired with pay for all loss of earnings suffered, and his record cleared of all charges."

## 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 absent without authority on December 1, 2, 3, 4, 7, and 8, 1987. Following these absences Carrier terminated Claimant's seniority in accordance with the provisions of the Letter of Understanding dated July 13, 1976,

which provides as follows:

"In connection with the application of (Rule 13) of the current Agreement, this will confirm our understanding reached in conference today that, effective October 1, 1976, to terminate the employment of an employee who was absent from duty without authority, the Company shall address, by registered or certified mail, return receipt requested, with copy to the General Chairman, notifying him that his seniority and employment have been terminated due to his being absent without proper authority and that he may, within 20 days of the date of such notice, if he so desires, request that he may be given an investigation under (Rule 13) the current Agreement. Note: effective January 1, 1984, the above understanding is to be applied only in cases where the employee is absent from duty without authority more than five (5) consecutive work days."

Under provisions of the above quoted letter, Claimant was permitted, if he felt he had been unjustly dealt with, to request an investigation. In this instance an investigation was requested and held on January 21, 1988. At that investigation, Claimant admitted that he was absent on the dates in question without authority, but indicated that the reason for his absence was because he did not have transportation to work.

The Petitioner argues that Claimant lives some 250 miles from his headquarters point and on occasion had no way to get to work. The Organization argues that the discipline in this case far exceeded

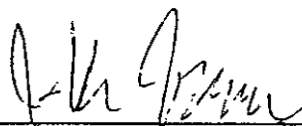
the nature of the violation and, in particular, this was excessive because Claimant had a clear record prior to this incident.

The Carrier argues that it cannot tolerate an absentee problem such as that presented by the Claimant in this instance. It believes that it is correctly using its authority granted under the Letter Agreement of July 1976 in the termination in this case.

It is apparent to the Board that the investigation requested by the Petitioner in this instance was for the purpose for either presenting evidence contrary to the Carrier's findings of absence, or to indicate what mitigating circumstances might have caused the absences. In this particular dispute, Claimant had no argument with respect to the facts, and his only mitigating comment was that he was some 250 miles from work at his residence and had to leave home at three or four in the morning in order to arrive at work on time. As the Board views it, Claimant's excuse hardly constitutes mitigating circumstances for his absence. His employee relationship requires him appearing for work on a regular basis. In particular, in this instance, the six days consecutive absence by Claimant was sufficient to cause Carrier to exercise its rights under the July 1976 Letter. The Claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



C. F. Foose, Employee Member



G. M. Garmon, Carrier Member

Chicago, Illinois  
April 27, 1989