

PUBLIC LAW BOARD NO. 2774

Award No. 193
Case No. 193

PARTIES
TO
DISPUTE:

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

STATEMENT
OF CLAIM:

"That the Carrier violated the Current Agreement when it dismissed Trackman R. Cliton, said action being excessive, unduly harsh and in abuse of discretion.

HUMAN RESOURCES
DEPARTMENT

SEP 27 1989

"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.

Claimant had worked for Carrier since 1977. By letter dated March 25, 1988, Claimant was charged with falsifying his reason for being absent on March 9, 1988; being absent without authority on both March 11 and 22, 1988; failing to comply with Roadmaster Lehnis' instructions that he was to report to his office on the morning of March 22, 1988; and finally, for falsifying a medical document on March 22, 1988. Following an investigation held on April 29, 1988, Claimant was found guilty of the charges and dismissed from Carrier's service.

The testimony at the investigation indicates that Claimant allegedly sustained an injury to his knee on March 3, 1988. He was taken to the emergency room at Maryvale Hospital for treatment. Subsequently, some time prior to March 9, 1988, Claimant requested and was granted permission to be off on March 9, 1988 for a follow-up check-up regarding his alleged injury. He testified at the hearing that he was examined at the Phoenix Indian Medical Center on March 9. However, Carrier's testimony, including

a document dated March 18, 1988 from the Phoenix Indian Medical Center indicated that Claimant was last seen at that facility on November 17, 1987. In short, there is no record with respect to the transcript of any treatment or examination at the facility on March 9, as Claimant testified to at the hearing. The record also reveals that Claimant was absent on both March 11 and March 22, 1988 without authority. This was admitted by Claimant in his testimony.

On March 23, Claimant presented to Carrier a release to return to work from the Phoenix Indian Medical Center, dated March 22, 1988. As part of that return to work document, in the remarks section, a statement appeared specifying:

"Due to misplaced records of patient for 3-9-88, can only provide statement for today."

Carrier verified the fact that this statement was not on the document which the hospital had prepared clearing Claimant to report for duty. In short, the remarks section was written by someone other than one of the personnel at the Phoenix Indian Medical Center. Thus, Carrier concluded that the document was falsified. There was also testimony that Claimant was told to report to the Roadmaster's office on March 22, 1988 and failed to do so. There was a conflict in testimony with respect to these instructions, and the hearing officer credited Carrier with this rather than Claimant, with respect to that day's activity.

After careful evaluation of the arguments presented by both the Organization and the Carrier, as well as the transcript of the investigation, the Board is of the opinion that the penalty of dismissal was justified. Claimant's prior record was not exemplary, since he had a long series of absences without authority prior to the incidents involved in this matter. More importantly, however, he was clearly guilty of the charges as alleged by Carrier, and did indeed falsify medical records, as well as the other transgressions specified in the original charges. Carrier was within its rights in determining that the

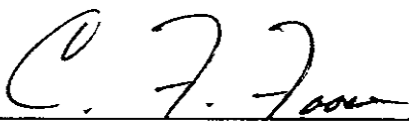
appropriate penalty for the flagrant violations which Claimant was guilty of was dismissal. The Board concurs.

AWARD

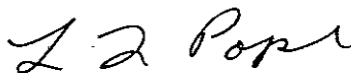
Claim denied.



I. M. Lieberman, Neutral-Chairman



C. F. Foose, Employee Member



Carrier Member

Chicago, Illinois
September 29, 1989