

PUBLIC LAW BOARD NO. 2774

Award No. 37  
Case No. 46

PARTIES  
TO  
DISPUTE

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

STATEMENT  
OF CLAIM

- "1. That the Carrier unjustly withheld Kansas City Division and Building Mechanic H.L. Evans from service November 12, 1980 and unjustly assessed his personal record ten (10) demerits after a formal investigation held December 29, 1980.
2. That Claimant Evans be paid eleven and one half (11½) hours pay at his pro rata rate and his personal record be expunged of ten (10) demerits and he be compensated for all wage lost incurred as a result of being required to attend formal investigation December 29, 1980."

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 herein, a member of a Bridge and Building Helper Gang at Kansas City, had working hours of 7:00 A.M. to 3:30 P.M. at the time of the incident herein. On November 11, 1980 the Veterans Day Holiday was celebrated. Claimant had performed compensated service the day before the holiday on November 10 but the incident herein involved November 12. On November 12, 1980 Claimant telephoned his foreman at about the start of the shift and asked for permission to be late to work. As the hearing revealed subsequently, the request for tardiness was necessitated by the malfunction of Claimant's home heating furnace. The permission to be late was granted by the foreman and Claimant reported to work at 12 noon of that day. At that time, Claimant's foreman told him he could not work based on instructions from the Division Engineer and sent him home. As a result of this action, Claimant lost three and a half hours pay for November

12 and also holiday pay for the previous day. Subsequently, on November 25, following a claim on this subject, on December 1, Claimant was notified to attend a formal investigation on December 11. Based on the December 11 investigation, Claimant was found guilty of violating certain Carrier rules by his tardiness on November 12 and was assessed ten demerits.

The record indicates further that on July 23, 1981 the Division Engineer issued a notice to all Maintenance of Way employees indicating that time off during assigned hours would be allowed for the following personal business reasons only: doctors appointment, dental appointment, eye examination appointment or emergency accident or sickness.

Carrier insists that it was perfectly correct in refusing to allow Claimant to finish out his shift in view of having arrived some five hours late. Further, based on this obvious infraction of normal working responsibilities and rules, Carrier was correct in refusing the previous days holiday pay as well as the demerits following the investigation. Carrier argues that an employee cannot be permitted to determine the time he will report for work on a unilateral basis.

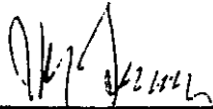
An examination of the transcript of the investigation reveals that there is no question but that Claimant was granted permission to be late on the day in question. Even though he was later than he had anticipated (having no control over the situation he was confronted with) nevertheless he was indeed absent with authority until the time he reported on November 12. Had the memorandum dated July 23, 1981 been in effect at the time of the incident involved herein, there would have been no question but that Claimant's actions were incorrect and he did not have proper authority to be late or off from work on November 12. However, in view of the fact that the memorandum was after the fact, after the incident herein, the claim must be sustained.

AWARD


Claim sustained

ORDER

Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I.M. Lieberman, Neutral-Chairman

  
S.E. Fleming, Employee Member  
G.M. Garmon, Carrier Member

May 13, 1982  
Chicago, IL