

PUBLIC LAW BOARD NO. 2774

Award No. 44

Case No. 53

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the Carrier violated the Agreement between the parties when on June 19, 1981, they dismissed Valley Division's Student Foreman, C. W. Patterson, said dismissal being arbitrary, excessive and in abuse of the Carrier's discretion.
2. That C. W. Patterson be restored to his former position with seniority, vacation and all other rights unimpaired and additionally be compensated for loss of earnings suffered account the Carrier's improper action."

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 had been employed as a Trackman by Carrier on November 30, 1979. On January 16, 1980, he had been made a Student Foreman. Following a formal investigation, conducted on May 22, 1981, he was removed from service and discharged by Carrier for allegedly falsifying his time records for the dates of April 13, 14, 29 and 30, 1981.

The record indicates that Carrier found that the Claimant had falsified

his time payroll records by claiming five hours on April 13, 1981, and eight hours on April 30, 1981, which had not been worked. In his testimony, at the Investigation, Claimant indicated that with respect to April 30th, he did not work on that date and had made an effort to remove the eight hours from his time sheet but the sheet was inadvertently turned in with the eight hours for the 30th still reflected. Concerning April 13th the Organization indicates that on that date, Claimant had banked certain hours for overtime work by the gang to which he had been assigned and his actions in claiming the five hours was perfectly appropriate.

An analysis of the record indicates that as a young student foreman Claimant had been responsible for his own time on his assignments and he had worked on several different positions with different hours during the period involved. Some of his work and pay involved time outside the normal hours of an assignment. It is apparent that there was considerable confusion with respect to the accounting methods used in recording the time for at least one of the major assignments to which Claimant had been assigned during the period of time under investigation. Nevertheless, with respect to at least one of the dates, April 30th, it is apparent that Claimant, whether by accident or otherwise, did indeed seek to be paid for time not worked. Under all the circumstances the Board is of the opinion that the discipline in this instance was harsh and unnecessarily arbitrary. Thus, the conclusion is reached that Claimant should be reinstated to his former position as a Trackman with all rights unimpaired

but without compensation for time lost. The period out of work shall be considered to have been a disciplinary suspension and it must also be noted that his reinstatement, under these circumstances, should not under any circumstances preclude future consideration for promotion for this employee.

AWARD

1. Claimant shall be reinstated to his former position with all rights unimpaired since the discipline accorded was both harsh and unnecessarily severe.
2. Claimant shall not receive pay for time lost and the time out of service shall be considered to have been a disciplinary suspension.

ORDER

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



I. M. Lieberman, Neutral Chairman



G. M. Garmon, Carrier Member



S. E. Fleming, Employee Member

February 8 , 1983
Chicago, IL