

PUBLIC LAW BOARD NO. 2774

Award No. 61  
Case No. 95

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 Parties' Agreement when on October 27, 1980, they arbitrarily terminated seniority and employment relationship with Trackman R. M. DeLeon without good and sufficient cause.
2. That the Carrier be required to reinstate claimant's seniority, all other rights, and, additionally, compensate him for loss of earnings suffered on account of 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 suffered a serious back injury while at work on approximately March 15, 1980. Following the injury, he was treated by a physician and was granted a leave of absence during the recovery period. On August 15, 1980, he reported for work but found that he was unable to perform physically in view of the prior injury. On the following morning, August 16, claimant contacted the Roadmaster's office with respect to a leave of absence and was referred to the Division Engineer's office in Fort Worth. Upon contacting that office, claimant was told that he needed a doctor's statement attesting to his continued disability for purposes of the leave of absence. Claimant's wife called Dr. Clark in Santa Fe Memorial Hospital requesting the necessary information from him for purposes of the leave. The record indicates that the information from the physician at the Santa Fe Hospital was not forwarded to Carrier and claimant was not given a leave of absence.

Carrier believes that claimant was properly found responsible (at the investigation).

for failing to protect his assignment without proper authority beginning August 16, 1980. In view of this violation and claimant's prior attendance record and discipline, Carrier believes that the assessment of dismissal was entirely just and appropriate. Petitioner, on the other hand, insists that claimant did everything he could to protect his job. He attempted to contact the physician and secure the information to support a leave of absence and, under the circumstances, he was caught in a situation resulting directly from a work-incurred injury over which he had little or no control.

There is no question but that Carrier was correct in insisting that claimant provide a proper application for leave of absence supported by a physician's statement for purposes of remaining off work starting August 16, 1980. Thus, from a narrow perspective, Carrier was eminently justified in this decision to terminate claimant's seniority. On the other hand, it is apparent that claimant made a bona fide effort to secure a leave of absence. He was aware of the necessity of obtaining a doctor's statement and attempted to do so. It must be noted, however, that he was not as diligent as he should have been in securing the necessary information. First, he did not know whether or not the doctor sent the statement forward to Carrier and he should have made sure that such statement was forwarded. Secondly, he should have made sure that his leave of absence was approved and not simply waited for two months prior to being notified of his dereliction. Thus, there was culpability on claimant's part.

The Board views the situation as one in which dismissal was unduly harsh under all the circumstances. Claimant's absence was directly attributable to a work-incurred injury and Carrier was aware of the necessity for the initial leave of absence and the reason for it. It is apparent that claimant should have secured the necessary approvals for a proper leave of absence but he should not have been dismissed for the failure to comply with the rule in this instance. Under the circumstances, therefore, we shall order claimant reinstated to his former position provided that he is physically and medically able to do the work but, in view of his own failures, we shall not order Carrier to compensate him for time lost.

AWARD

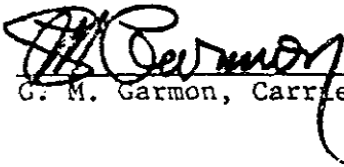
Claim sustained in part; claimant will be reinstated to his former position with all rights unimpaired, provided that he is physically and medically able to perform the work, but he will not be compensated for time lost.

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



C. F. Foose, Employee Member

Chicago, Illinois

December 7, 1983