

PUBLIC LAW BOARD NO. 4021

Award No. 11
Case No. 10

PARTIES
TO
DISPUTE

The Brotherhood of Maintenance of Way Employes
and
The Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM

1. Carrier's decision to remove Illinois Division B&B Mechanic C. W. Senf from service effective February 13, 1984, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Senf with his seniority rights unimpaired, and compensate him for all wages lost from February 13, 1984.

FINDINGS

This Board, upon the whole record and all the evidence, 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 by Agreement dated November 26, 1985, and has jurisdiction of the parties and the subject matter.

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Claimant was employed by the Carrier for more than ten years, as a Bridge and Building Mechanic. On February 10, 1984, he signed a waiver of formal investigation, and accepted 20 demerits under the Brown System of Discipline, for being absent from work without permission on February 9 and 10, 1984. These 20 demerits brought Claimant's demerit balance to sixty, the point at which employees are subject to dismissal under the system in effect on this property.

On February 13, 1984, Claimant was notified in a letter from the Superintendent, that his seniority and employment was terminated, effective immediately, due to his accumulation of excessive demerits. The Organization appealed the propriety of the discharge and argued that Claimant was not aware that he would be fired if he waived his rights and accepted the demerits.

In the subsequent handling of the case, considerable discussion and correspondence was exchanged between the Carrier and the Organization with respect to Claimant's participation in Alcoholics Anonymous. Claimant asserts that he has learned he has a problem with alcohol, that his problem with alcohol was the cause of his

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poor attendance on the job, and that he will go to any length to make amends to his employer.

There is no dispute that Claimant had a balance of sixty demerits on his record at the time of his termination. It is also undisputed that the Brown System in effect on this property subjects an employee to dismissal when his balance reaches sixty demerits. The Organization objects to the fact that the Claimant executed a waiver of his rights and accepted the final twenty demerits, and asserts that Claimant was not aware of the fact that such action would subject him to dismissal.

The Board understands the Organization's frustration, when an employee takes such action without seeking counsel from the union; however, the fact remains that Claimant did execute the waiver, and the record is clear that Claimant was advised of his both his balance at the time, and that he would be subject to dismissal if he signed the waiver.

The Brown System of Discipline has been in effect on this property for many years, and has been upheld in many prior Awards.

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There is nothing in the record which indicates that Carrier failed to comply with this time-tested system, or that it discriminated against the Claimant in any way. Under the facts in the record, the Claimant was properly dismissed from the service.

However, the record of this case entails more than the simple application of the Brown System. Claimant received demerits on eight separate occasions during his career with the Carrier, and all were for being absent without authority. It is clear from the record that Claimant is an Alcoholic, and his past discipline tells a different story when viewed in that light.

The Organization submitted a letter from Claimant, acknowledging his past offenses, and seeking the opportunity to make amends to the Carrier. He asserts that he is committed to the program of Alcoholics Anonymous, and will continue that participation; that he has "almost daily contact" with the program, and has accepted his disease.

In view of the fact that Claimant has a considerable length of service with the Carrier, and his record contains only offenses

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which can be attributed to his alcoholism, it is likely that the Claimant would be an asset to the Carrier if he can continue to maintain his sobriety. Therefore, the Board will reinstate the Claimant, without pay for time lost, with the following conditions:

1. That for a period of one year following his reinstatement, Claimant will attend a minimum of three Alcoholics Anonymous meetings per week;
2. That Claimant will contact the appropriate Carrier Employee Assistance counsellor once each month during that period, and provide that Counsellor monthly with evidence that he is complying with the previous requirement;
3. That Claimant will abstain from the use of alcoholic beverages, attend to his duties, and comply with Carrier's Rules.


Claimant will be reinstated to service, on a leniency basis, and his demerit balance will be reduced to fifty demerits. If Claimant violates any of the foregoing conditions, his record will be assessed sufficient demerits to restore his balance to sixty, and he will be dismissed from the service.

AWARD

Claimant is reinstated to the service, subject to the conditions described above, without pay for time lost.


C. F. Foose, Employee Member


L. L. Pope, Carrier Member


J. R. Johnson, Chairman
and Neutral Member

Dated: ~~April~~ ^{May 21, 1986}, 1986