

PUBLIC LAW BOARD NO. 4021

Award No. 8
Case No. 2

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

1. Carrier's decision to remove Los Angeles Division Trackman J. P. Robinson from service effective August 29, 1984, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Robinson to service with his seniority rights unimpaired, and compensate him for all wages lost from August 29, 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.

On August 29, 1984, Claimant signed a form waiving his right to a formal investigation, and accepting the recommended discipline of 20 demerits for violation of Rule 15 of Carrier's Standard Rules for the Guidance of Employees. The Form also indicated that Claimant's record stood with a balance of 70 demerits at that time. A letter was prepared and sent to Claimant on that date via Certified Mail, which detailed Claimant's past record, and advised him that his seniority and employment had been terminated due to his accumulation of excessive demerits under the Brown System of Discipline, which is in effect on this property.

The Organization argues that the Claimant was not advised of the amount of demerits to be assessed before he signed the Waiver, and, therefore, Claimant did not realize that this action would result in dismissal. The evidence in the record does not support that contention. The Waiver dated August 29, 1984 indicates that the recommended discipline is 20 demerits, and that Claimant's record then stood with a balance of 70 demerits. It further provided that:

I understand that a balance of sixty demerits subjects me to dismissal under the provisions of Rule 31, Paragraph "II", of the General Rules for the Guidance of Employees.

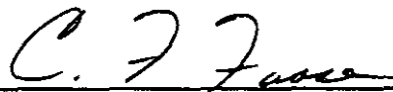
When the Claimant executed that Form, he surrendered his right to a formal investigation, which would have placed upon Carrier the burden to prove that Claimant was guilty of the Charges. Therefore, the question of Claimant's guilt is not before this Board. When Claimant executed the Form, he further agreed to accept the discipline of twenty demerits indicated on that Form. Therefore, the question of whether the measure of Discipline was appropriate is not before this Board. When the Claimant signed the Waiver, without the advice or representation of the Organization, he narrowed the issue for appeal to whether or not his record did, in fact, stand in excess of sixty demerits at the time of his termination.

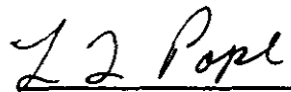
The record is clear. The evidence shows that Claimant signed a Waiver on July 13, 1984, accepting 20 demerits, which gave him a balance of 30 demerits at that time. He signed another Waiver on August 21, 1984, accepting 20 additional demerits, which brought his balance to 50 demerits, and signed the final Waiver on August 29, 1984, accepting 20 additional demerits, raising his balance to 70 demerits, and subjecting himself to dismissal from the service. The Board finds that Claimant's record did properly stand at 70 demerits at the time of his dismissal.

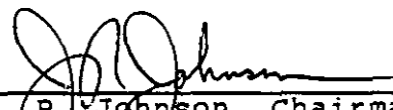
There is no challenge of the Brown System in the record, or a showing of fraud or duress with respect to the execution of the Waiver. Therefore, we will deny the claim.

AWARD

Claim denied.


C. F. Foose, Employee Member


L. L. Pope, Carrier Member


J. R. Johnson, Chairman
and Neutral Member

Dated: March, 31 1986