

Award No. 11
Case No. 11

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
TO) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

STATEMENT OF CLAIM: Carrier's decision to remove former Albuquerque Trackman R. Jackson from service, effective February 16, 1987 was unjust.

Accordingly, Carrier should be required to reinstate Claimant Jackson to service with his seniority rights unimpaired and compensate him for all wages lost from February 16, 1987.

FINDINGS: This Public Law Board No. 4244 (the "Board") upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, this Board has jurisdiction over the parties and the subject matter involved, and that the parties to this dispute were given due notice of the hearing thereon.

In this dispute former Albuquerque Division Trackman R. Jackson (the "Claimant") was notified to attend a formal investigation on March 6, 1987, concerning the Claimant's alleged violation of Rules 13 and 15 of the Carrier's General Rules for the Guidance of Employees, 1978, Form 2626 Std., when he was allegedly absent without permission from his position as Trackman on Ballast Unloading Gang 350 from February 9 through 13, 1987.

Pursuant to the formal investigation, the Claimant was found guilty and his personal record was assessed thirty (30) demerits for his violation of Rules 13 and 15. The assessment of the 30 demerits resulted in his accumulation of sixty (60) demerits, which according to Rule 30(H) of the General Rules for the Guidance of Employees provides that "a balance of sixty demerits subjects an employee to dismissal." Thus, the Carrier removed the Claimant from service. The Organization filed a claim on the Claimant's behalf, which is now before this Board for a decision.

Personnel Clerk L.D. Kovacsics testified that she had received AWOL wires that were phoned in to her by Foreman P. Lugo for the period of February 9 through the 13th stating that the Claimant did not report for work on these dates. Kovacsics submitted a copy of Foreman Lugo's daily work diary which showed that the Claimant had been absent without leave on the days in question. She further testified that the Claimant had not applied for a leave of absence during this period.

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The Claimant admitted at the investigation that he was absent from duty for five consecutive working days. He testified that he did not have permission to be absent nor had he applied for a leave of absence. The Claimant further testified that he had not reported for work because he was in jail for three of these days. Although he attempted to make contact with the Carrier, he was never able to reach his supervisors to get permission to be off.

After reviewing the entire transcript of record and all the evidence, it appears to the Board that there is substantial evidence for the Carrier to find the Claimant guilty. Numerous board awards have held that incarceration does not constitute an unavoidable absence from work. Furthermore, unauthorized absences from duty are serious offenses which can result in dismissal from service. Considering the seriousness of the offense committed as well as the Claimant's unsatisfactory past record, the assessment of thirty (30) demerits was appropriate. Consequently, Claimant was properly removed from service for accumulation of excessive demerits.

The Board further finds that there is no evidence that the Carrier violated Rule 13 and Appendix 11 of the agreement between the parties dated January 1, 1984 as amended.

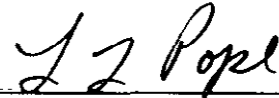
AWARD: Claim denied.



Alan J. Fisher, Chairman
and Neutral Member



C.F. Foose
Organization Member



L.L. Pope
Carrier Member

Dated: December 10, 1987
Chicago, Illinois