

Award No. 131
Case No. 136

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.
TO THE) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Carrier's decision to remove former Central Region, Seniority District No. 1 B&B Mechanic J. H. Gregory from service, effective July 19, 1993, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Gregory to service with his seniority rights unimpaired and compensate him for all wages lost from July 19, 1993.

FINDINGS: This Public Law Board No. 4244 (the "Board") finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and the subject matter involved.

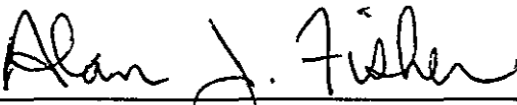
The record shows that in a letter dated July 19, 1993, former Central Region B&B Mechanic J. H. Gregory (the "Claimant") was notified that his seniority and employment were terminated for being absent without authority for more than five consecutive work days beginning May 27, 1993. He was further advised that within twenty days of the date of the letter he could request a formal investigation under Rule 13 of the Agreement.

The record further shows that the Claimant requested an investigation and he received proper notice of the hearing by a certified letter dated August 5, 1993. The notice stated that an investigation was scheduled for August 16, 1993, concerning his possible violation of Rules 1005 and 1007 of the Carrier's Safety and General for All Employees as a result of being absent from duty without proper authority beginning May 27, 1993. However, the Claimant did not attend the investigation. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules, and his removal from service was upheld.

It was established at the formal investigation that the Claimant had been advised of the hearing but he could not attend because he was incarcerated. It was also established at the hearing that his incarceration resulted in his absence from duty without permission.

After reviewing the evidence and testimony of record, the Board finds that the Carrier did not violate the agreement when it held the investigation *in absentia*, and there is no basis to set aside or modify the discipline. Consistent with numerous awards in the rail industry, as well as prior awards by this Board, incarceration does not relieve an employee of his obligation to report for work. Thus, the Claimant's removal from service was proper in this case.

AWARD: Claim denied.


Alan J. Fisher
Chairman and Neutral Member


C. F. Foose
Organization Member


Lyle L. Pope
Carrier Member

Dated: October 19, 1994
Schaumburg, Illinois