

PUBLIC LAW BOARD NO. 4244

**Award No. 199
Case No. 204**

Parties to Dispute: (**BROTHERHOOD OF MAINTENANCE**
(**OF WAY EMPLOYES**
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(**-and-**
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(**THE ATCHISON, TOPEKA AND**
(**SANTA FE RAILWAY COMPANY**
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Statement of Claim:

1. Carrier's decision to remove former Central Region Seniority District No. 1 Trackman R. P. Vigil from service, effective January 13, 1995, was unjust.
2. Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from January 13, 1995. (Files 95-11-21/150-13A1-9428)

INTRODUCTION

This Board was duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Act, 45 U.S.C. Section 153, Second. This matter came on for hearing before the Board on September 9, 1996, in Chicago, Illinois. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee

representative ("Organization") within the meaning of the Railway Labor Act ("Act"), as amended.

FINDINGS

On December 8, 1994, the claimant, trackman Roy P. Vigil, was notified that his seniority and employment with the Carrier were terminated due to his being absent without proper authority for more than five consecutive work days beginning October 27, 1994. The claimant timely exercised his right to an investigation pursuant to Rule 13 and the provisions of Appendix No. 11 to the collective bargaining agreement. A formal investigation was conducted on January 13, 1995, and by letter dated February 10, 1995, the claimant was dismissed from his employment with the Carrier for violation of Rules 1.13 and 1.15 of the Safety and General Rules for All Employees, effective September 30, 1994.

The claimant suffered an alleged on duty injury to his knee on July 21, 1994. Upon notice from the claimant's treating physician, a leave of absence for the claimant was authorized for the period August 8 through October 26, 1994. The grant of the leave of absence dated September 16, 1994, further provided, in pertinent part:

If an extension of your leave is needed, please ensure your physician's recommendation is submitted to this office prior to the expiration of the above authorized period. . . . Failure to protect your absence from service as indicated above will result in your failure to comply with instructions and will be handled in accordance with the rules.

The claimant admitted that he received a copy of the September 16, 1994, letter.

The roadmaster at El Paso testified that the claimant suffered an injury at Mesquite. The claimant failed to secure a leave of absence beyond October 26, 1994 and, therefore, the claimant was considered absent without authority immediately after October 26. On cross-examination, the roadmaster acknowledged that the claimant could not have returned to work without a release from a physician. The roadmaster denied the Carrier had knowledge the claimant remained off work due to the injury after the leave of absence had expired on October 26, although he further indicated an extension of a leave of absence is granted automatically upon receipt of a physician's recommendation.

The claimant testified that he suffered an injury on July 21, and had surgery due to the injury on December 5, 1994. While he maintained the Carrier knew he was hurt, the claimant could not recall when he advised the Carrier that his injury required an operation on his knee. The claimant submitted a handwritten note dated January 3, 1995, from his surgeon that he was under the physician's care and would so remain for a minimum period of three to five months. He admitted failing to request a leave absence beyond October 26, in the following manner:

No, sir. Because I guess I just automatically — I just forgot. I've been too busy going to therapy every day, seeing the doctor. And it's just slipped my mind. Also the first one was covered it and the one that this information the doctor sent. I thought that would be enough. (Tr. 15).

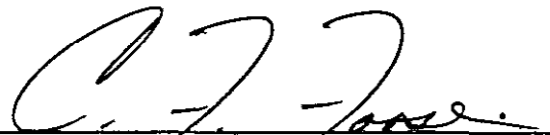
The Board finds the claimant absented himself from duty without proper authority in that he failed to obtain an extension of the leave of absence due to his injury. The testimony of record is that such an extension would have been granted had the claimant simply provided the Carrier officials with a physician's statement requesting additional leave time due to his medical condition. The claimant neglected his duty to notify the Carrier as required by the rules.

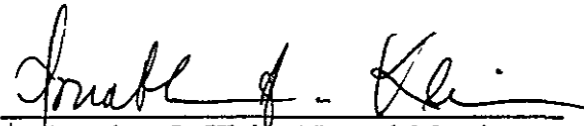
While the Carrier had notice the claimant had been injured in July, the Board remains unpersuaded that the claimant advised Carrier of the medical need for him to remain on a leave of absence, and there is certainly no evidence that he did so by means of written correspondence during the period covered by the initial leave of absence. While the claimant's injuries appear to have required a lengthy convalescence, including surgery, the claimant did not comport with the basic instructions for an extension of his leave. The claimant was informed of his obligation to do so which he ignored at his peril. Although the evidence does not warrant upholding the penalty of dismissal based upon the particular circumstances of this dispute, after due consideration of the claimant's past disciplinary record and the reasons offered in mitigation of his dismissal, the Board determines that claimant shall be reinstated to service with his seniority rights unimpaired, but without back pay.

AWARD

The claim is sustained, in part, as follows. The claimant shall be reinstated to his employment relationship with the Carrier with his seniority rights unimpaired within thirty (30) days of the date of this award, but without back pay.



Greg Griffin, Carrier Member

Clarence F. Foose, Employee Member

Jonathan I. Klein, Neutral Member

Award issued the 13 day of January, 1996.⁷