

Award No. 36
Case No. 41

PUBLIC LAW BOARD NO. 4244

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

STATEMENT OF CLAIM: 1. Carrier's decision to remove Texas Division Trackman A. L. Yarbough from service was unjust.

2. That the Carrier now reinstate Claimant Yarbough with seniority, vacation all benefit rights unimpaired and pay for all wage lost as a result of investigation held 9:23 a.m., January 13, 1989 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, permanent removal from service is extreme and harsh discipline under the circumstances.

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.

In this dispute former Texas Division Trackman A. L. Yarbough (the "Claimant") was notified to attend a formal investigation on December 2, 1988 in connection with his alleged violation of Rules 1000 and 1004 of the Carrier's Safety and General Rules for All Employees, concerning his alleged failure to report to work as instructed after his doctor's appointment on Friday, November 4, 1988. The investigation was postponed and eventually held on January 13, 1989.

As a result of the investigation the Claimant was found to have violated the cited rules, and his personal record was assessed thirty (30) demerits. The assessment of 30 demerits resulted in his accumulation of seventy (70) demerits, which according to Rule 1028 (h) of the Safety and General Rules provide that "a balance of sixty demerits subjects an employee to dismissal." Thus, the Claimant's seniority and employment were terminated effective January 13, 1989 due to his accumulation of excessive demerits.

The record shows that the Claimant had a 9:00 a.m. appointment with an orthopedic surgeon in Beaumont, Texas on November 4, 1988 for an on-duty injury. The Claimant requested to be off that day in order to see a second doctor concerning a cold. At the formal investigation Section Foreman M. A. Knight and Track Supervisor L. G. Huggins testified that they each gave specific instructions to the Claimant to return to work after his first appointment, and if he did not, he must have a doctor's release from the second doctor. The record shows that the Claimant did not report to work on November 4.

Roadmaster J. S. Campbell testified that on November 9, he asked the Claimant to furnish a medical release from the second doctor as instructed. The Claimant then informed Campbell that he went home after his initial appointment and that he did not have a release. Campbell further testified that the Claimant declared to him that the Claimant did not know that he was suppose to return to work after his 9:00 a.m. doctor's appointment on November 4.

The Claimant initially admitted at the investigation that he was instructed to bring a doctor's release if he did not report for work after his first doctor's appointment. He also testified that he did not have permission to be absent from work on November 4. However, the Claimant latered testified during the investigation that Knight told him on November 7, that he did not have to provide a release, that he had permission to be absent on November 4, and that he was not instructed by his supervisors to return to work after his appointment with Dr. Bessell, his orthodepic surgeon. The Claimant also declared that Dr. Bessell told him not to report for duty on November 4, because of his condition. The Organization introduced a statement dated November 30, 1988 from Bessell in support of the Claimant's argument.

The Board has carefully reviewed all the evidence and testimony of record. The Board finds that the testimony offered by the Carrier's witnesses established the truth of the matter. Based on this testimony the Board concludes that the Claimant failed to comply with his supervisors' instructions as alleged by the Carrier.

4244


Award No. 36
Page No. 3

It is the Board's opinion that it was appropriate to discipline the Claimant. He was not an exemplary employee. The record shows that the Claimant had been assessed demerits repeatedly for being late for work or absent without proper authority. Moreover, he had been discharged and suspended from service previously for similar rules violations. However, the Board finds that the Claimant shall be given one last opportunity to return to the Carrier's service. Accordingly, the Claimant shall be reinstated to service with his seniority rights unimpaired, but without pay for time lost. The Claimant's personal record shall now stand with fifty (50) demerits.


AWARD: Claim sustained as set forth in the Findings.



Alan J. Fisher, Chairman
and Neutral Member



Clarence F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: August 18, 1989
Chicago, Illinois