

PUBLIC LAW BOARD NO. 4823

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

STATEMENT OF CLAIM:

"1. That the Carrier's decision to remove Texas Division Trackman J. R. Watson from service was unjust.

2. That the Carrier now reinstate Claimant Watson with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held August 9, 1990, continuing forward and/or otherwise made whole because the Carrier did not introduce substantial, creditable (sic.) 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. 4823 finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

On July 25, 1990, Carrier's Division Manager wrote the claimant, in pertinent part, as follows:

"Arrange to report to Assistanat Superintendent's Office, Temple, Texas, at 9:00 AM, August 9, 1990, with your representative and witness(es) if desired, for formal investigation to develop the facts and place your responsibility, if any, in connection with possible violation of Rules B and 1004, Safety and General Rules for all Employees, concerning your allegedly being absent from duty without proper authority on July 13, 16, 17, 19, 20, 23 and 24, 1990."

The investigation was held as scheduled, following which Carrier found the claimant responsible for violation

of the rules cited and immediately discharged him from service for his responsibility in connection therewith.

Claimant's representative at the investigation filed the following dissent to Carrier's decision:

"I decent (sic.) the decision of the Investigating Committee to remove Mr. Watson from service at the conclusion of the investigation rather than being based on the written transcript. The Organization believes terminating Mr. Watson as discipline was extremely excessive for the rules cited (sic.)."

An objective perusal of the testimony developed at the investigation reveals that the claimant understood the rules cited and readily admitted to having violated them. His reason for having been absent from duty without authority on the dates in question was very vague. On Page 4 of the transcript the claimant testified as follows to questions by his representative at the investigation:

"Q. Mr. Watson, is there any particular reason why you were absent on these days?

A. Personal problems.

Q. Nothing that concerns the railroad at this time, is that correct?

A. Not anything that I am able to go into at this time."

From the testimony of record, including that quoted above, there is no basis for concluding that any mitigating circumstances existed which warrant either setting aside or reducing the discipline assessed. Further, in view of the fact that there were no conflicts in testimony or disputes in fact(s) to resolve, and no mitigating circumstances to consider and/or evaluate, it was not improper for the Carrier to render its decision immediately following the investigation.

As concerns the Employees' position that permanent removal from service is extreme and harsh discipline under the circumstances, the Boards notes that the claimant has an extremely poor discipline record. He had been assessed demerits on 12 previous occasions (totaling 220), most of which involved absence from duty without authority, as well as having been previously discharged (for threatening another employee and withholding information concerning same) and suspended for being absent from duty without authority. The various divisions of the National Railroad Adjustment Board, Special Boards of Adjustment and Public

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Law Boards have consistently held that Carriers have a right to expect their employees to report for duty as assigned and absence from duty without authority is a serious violation of the rules. Additionally, said tribunals have consistently held that a Carrier may consider an employee's past record in determining the measure of discipline to be assessed for a rule violation.

For all the reasons set forth above, the Board finds that the claimant was properly found responsible for violation of the rules cited and. In view of the serious nature of the violation and the claimant's extremely poor discipline record, his removal from service for his responsibility in connection therewith was entirely appropriate.

AWARD: Claim denied.

Michael Garmon  
G. Michael Garmon, Chairman

C. C. Jones  
Employee Member

L L Pope  
Carrier Member

Dated at Chicago, IL:

September 21, 1990