

AWARD NO. 24

Case No. 24

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:

"Carrier's decision to remove former Texas Division Trackman K. R. Gill from service, effective May 10, 1990, was unjust.

Accordingly, Carrier should now be required to reinstate the claimant with his seniority rights unimpaired and compensate him for all wages lost from May 10, 1990. (Files 11-680-120-870/90=1301-901)"

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 May 3, 1990, Carrier's Division Manager wrote the claimant, in pertinent part, as follows:

"Arrange to report to Superintendent's Office, 214 Brisbane Road, Houston, Texas, at 2:00 P.M., Thursday, May 10, 1990, with your representative and witness(es), if desired, for formal investigation to develop all facts and place your responsibility, if any, in connection with possible violation of Rule 1004, Safety and General Rules for All Employees, Form 2629 Std., effective October 29, 1989, concerning your alleged absence from duty without proper authority while assigned as trackman on Somerville East Section on Friday, April 20, 1990."

The investigation was held as scheduled, but the claimant did not attend. Following the investigation, he was found responsible for violation of the rule cited in the notice of investigation and was assessed thirty (30) demerits for his responsibility in connection therewith. The assessment of 30 demerits against his personal record resulted in his accumulation of excessive demerits (80), for

which he was removed from service in accordance with Letter of Understanding dated April 16, 1979.

During the investigation a Carrier witness (Relief Foreman Gaas) testified the claimant told him that he was absent on April 20, 1990, account he had to go to the emergency room with a severe headache; this apparently was corroborated by a statement from the emergency room. Claimant allegedly told him the reason he did not call in to report that he was going to be absent was that he didn't have the foreman's telephone number.

Another Carrier witness (Roadmaster Wagner) testified that the claimant told him that he had not obtained the foreman's telephone number because he didn't plan on laying off. Claimant also allegedly told him that he understood that it was his responsibility to contact his foreman prior to missing work. Allegedly, the claimant called Roadmaster Wagner's telephone number at approximately 7:45 AM on April 20 and activated a recorded message. Subsequently, Claimant told him that he didn't want to talk to a recorder; he needed to talk to the Roadmaster in person. According to Roadmaster Wagner, the claimant acknowledged that he had violated the rule(s), but he refused to sign for the demerits.

The Employees contend, in pertinent part, as follows:

"Claimant Gill was absent from work on April 20, 1990, due to the fact that he was in the Emergency Room in a Hospital in Beaumont, Texas. The fact was verified by Carrier Witness Gaas. For that reason, the claimant was unable to secure permission to be off prior to the regular starting time on that date. Carrier Witness Gaas also testified that the Claimant brought a statement from the emergency room, and presented the statement to him on April 23, the next work-day.

Carrier Witness Gaas further testified that when he questioned the Claimant as to why he had not secured permission to be off, the Claimant responded that he did not have the proper telephone number to do so.

Carrier Witness Wagner also testified that the telephone number required was not a listed number, and also the telephone number to his Office was likewise unlisted. As a result of both numbers needed to secure the permission being unlisted, there was no way the Claimant could have been able to obtain the numbers while at the Hospital.

"Rule 22 (b) states 'In case of absence due to sickness or injury the following shall apply:

(1) When an employee expects to be absent from work for ten (10) calendar days or less, account bona fide sickness or injury, he must promptly notify his supervisor on the first day, if possible, indicating as nearly as possible the number of days he expects to be absent.'

Whereas, the telephone numbers required to secure the permission was not readily available to the Claimant, and the Claimant did provide documentation to the effect that he was at the Emergency Room, on the first work-day following this incident to his Supervision, there is no way the Carrier could consider Claimant Gill as being AWOL. Therefore, any discipline assessed is totally unwarranted."

The Board finds that the existence of what appear to be mitigating circumstances justifying the claimant's failure to notify his foreman that he was going to miss work in the instant case is moot, inasmuch as the claimant's failure to attend the investigation (absent some evidence of mitigating circumstances justifying said failure) is tantamount to a plea of no defense. In view of the serious nature of the violation and the claimant's poor discipline record (he was assessed demerits on 4 occasions, totaling 90, all for absence from duty without authority or reporting late for work), the Board finds that the claimant was properly found in violation of the rule cited and that the assessment of 30 demerits was an appropriate measure of discipline for his responsibility in connection therewith. Likewise, the Board finds that the claimant's removal from service for accumulation of excessive demerits was in accordance with the Brown System of Discipline in effect on Carrier's property and the Letter of Understanding dated April 16, 1979.

AWARD: Claim denied.

  
G. Michael Garmon, Chairman

  
Employee Member

  
Carrier Member

Dated at Chicago, IL:

November 15, 1980