

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 Illinois Division Machine Operator G. W. Grosekemper from service was unjust.

2. That the Carrier now reinstate Claimant Grosekemper with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held October 29, 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 September 24, 1990, Carrier's Regional Manager wrote the claimant as follows:

"This letter has reference to your continued absence from work account medical condition.

Records indicate you were placed in Class IV on October 13, 1988 by Medical Director Dr. R. K. Khuri and you are now being requested to furnish an update concerning your medical status no later than October 19, 1990.

Further, you must continue to protect yourself with an authorized leave of absence and I am enclosing Form 1516 Standard, which you must complete and forward along with your doctor's medical recommenda-

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"tions in accordance with the rules."

The record reflects that the Post Office made three attempts to deliver this letter (9-26-90, 10-3-90 and 10-6-90), to no avail; it was returned to sender account "unclaimed."

On October 23, 1990, Carrier's Regional Manager wrote the claimant, in pertinent part, as follows:

"You are hereby notified to attend formal investigation at Superintendent's Office Conference Room, 3611 W. 38th Street, Chicago, Illinois at 12:00 Noon, on Monday, October 29, 1990.

This investigation will be conducted to determine the facts and place responsibility, if any, regarding your alleged failure to follow instructions as outlined in my letter dated September 24, 1990, in possible violation of General Rules 1004, 1018 and 1020 of Safety and General Rules for all Employees effective October 29, 1989."

Claimant did not attend the investigation, which is tantamount to a plea of no defense.


Following the investigation, Carrier found the claimant responsible for violation of the rules cited in the notice of investigation, and removed him from service for his responsibility in connection therewith.

Based on the record before it, the Board finds no basis for overturning or modifying the Carrier's decision in the instant case.

AWARD: Claim denied.


G. Michael Garmon, Chairman


Employee Member


Carrier Member

Dated at Chicago, IL: December 27, 1990