

AWARD NO. 27

Case No. 27

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 Truck Driver R. A. Schultz from service was unjust.

2. That the Carrier now reinstate Claimant Schultz 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 August 2, 1990, Carrier's Medical Director wrote Claimant at his last known address on file, in pertinent part, as follows:

"You have been subject to periodic urine drug screening due to previously testing positive. Having failed to obey my instructions to provide a specimen for testing, you are medically disqualified from service. Your return to service is dependent upon accomplishing BOTH of the following within 30 calendar days of receipt of this letter:

1. Obtaining an evaluation and clearance to return to work from the Santa Fe Employee Assistance Counselor in your area, whose telephone number appears below. (Since this process may take time to schedule and report, allow at least ten days before your deadline to contact the Counselor).

Case No. 27.....Page 2.....AWARD NO. 27

- "2. After you have completed Step 1 above, you must provide a supervised specimen which tests negative. When you are ready, take this letter and the enclosed test requisition form to the office of Dr. J. E. Gottemoller.

FAILURE TO FOLLOW THESE INSTRUCTIONS AND ACCOMPLISH BOTH REQUIREMENTS WITHIN 30 CALENDAR DAYS OF RECEIPT OF THIS LETTER WILL RESULT IN MY ADVISING THE DIVISION MANAGER. YOU THEN MAY BE SUBJECT TO DISCIPLINARY ACTION."

This letter was returned to sender account "Box Closed - No Order - Addressee unknown."

On August 21, 1990, Carrier's Medical Director wrote an identical letter to Claimant at a new address and it was signed for (receipted) by Erica Johnson.

On September 25, 1990, Carrier's Medical Director wrote Carrier's Regional Manager (with copy to Claimant), as follows:

"The above-named employee has been subject to periodic urine drug screening due to previously testing positive. Having failed to obey the Medical Departments (sic.) instructions to provide a urine drug screen specimen for testing within 5 (five) calendar days of receipt of the January 13, 1989 letter he was medically disqualified. He has failed to contact a Santa Fe Employee Assistance Counselor and provide a supervised specimen which tests negative. This information is being relayed to you for formal administrative action."

On October 4, 1990, Carrier's Regional Manager wrote 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 1:30 P.M., on October 17, 1990.

This investigation will be conducted to determine the facts and place responsibility, if any, regarding your alleged failure to follow instructions given you by the Medical Director-System by letter dated August 21, 1990, in possible violation of General Rules B, C, 1007, 1020 and 1026 of Safety and General Rules for all Employees effective October 29, 1989."

Case No. 27.....Page 3.....AWARD NO. 27

At the request of the General Chairman, the investigation was postponed until October 29, 1990.

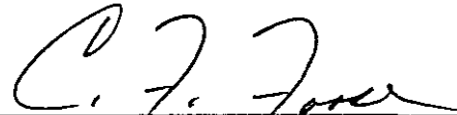
Claimant did not attend the investigation, which is tantamount to a plea of no defense.

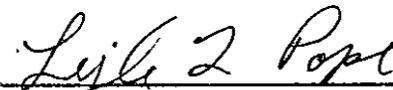
Following the investigation, Carrier found the claimant responsible for violation of the rules cited in the notice of investigation, and removed him from service for his responsibility in connection therewith.

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