

AWARD NO. 28

Case No. 28

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 Trackman C. H. Flanary from service was unjust.

2. That the Carrier now reinstate Claimant Flanary 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 October 15, 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 10:00 A.M., 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 given you by the Medical Director-System by letter dated July 31, 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."

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The investigation was conducted as scheduled, following which Carrier found the claimant responsible for violation of the rules cited in the notice of investigation and removed him from service as a result thereof.

At the outset of the investigation, the claimant was asked if he understood the rules he was alleged to have violated. He replied (on page 3 of the transcript) as follows:

"Yes, but I never received a copy of them, because I haven't worked since 1988 up until three weeks in July when I finally found out I was on medical, off on, I was never informed by the company or anybody else that I was medically disqualified."

Absent a showing that the rules cited from the current rule book are essentially the same as those contained in previous rule book(s) Claimant had received, the claimant cannot properly be found to have violated the current rules. No such showing is contained in the record before the Board. Carrier, therefore, was wrong in finding claimant responsible for violating rules from a rule book which he had not been issued. Nevertheless, pages 4 and 5 of the transcript of investigation contain the following testimony:

"MR. RITTER QUESTIONS MR. FLANARY:

Q. I'll show you a letter dated July 31, 1990?

A. Yes sir, this is the one I just read.

Q. This letter asks you to obtain an evaluation and clearance to return to work from Santa Fe Employee Assistance Counselor, this would be Terry Cordray. Did you do this?

A. No I didn't. I did specifically make the appointment for the urine test, after I talked to him and he recommended me to go into a rehab, but I said that I would get back to him to let him know I'd be able to do that if I thought I should do it, since I never knew that I had to do it. I was off 2 years waiting for someone to explain to me why I was off so long and laid off any way.

Q. You did not obtain an evaluation from Mr. Cordray as a result of this July 31st letter?

A. His recommendation was only that I should check into a rehab at sometime before I went and took a drug screen.

Q. And did you do that?

A. No sir I didn't.

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"Q. And did you provide a specimen?

A. He told me I couldn't do that until I had a clearance from him.

Q. So you did not comply with this letter of July 31st, 1990?

A. No.

MR. RITTER: I have no further questions, Mr. Hemphill?

MR. HEMPHILL QUESTIONS MR. FLANARY:

Q. Is there any reason you did not comply with those instructions?

A. Yes, because I didn't feel like I should have to sit in a rehab when I've been off for 2 years waiting to go back to work seemed kind of senseless once the work season and he based his recommendation, I feel, on stuff that happened prior to any of this that had no bearing on any of this. I hadn't had another positive test or or anything else for any reason for him to recommend 30 days in a rehab. I told him I felt at the time it was more important for me to work and take care of my family then (sic.) it was to sit in a rehab and I also asked why the company never felt that they at least owed me a little bit to notify me that I was off, disqualification from the medical department. If I had been notified in the wintertime I could have done a rehab or anything else that he wanted me to do.

Q. Have you performed any service for this company since July 31st?

A. No sir, and he wouldn't guarantee me that if I went into a rehab that I would anyway, this is what I asked him. I said if I went 30 days in rehab would I be able to see any more work this year at all. He said, it was kind of a silly question, but that's what I asked him. I sort of figured I'd be laid off the rest of the year anyway, like the last 2 years."

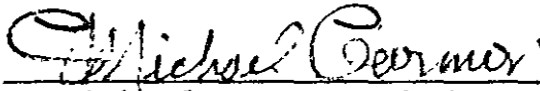
While the Medical Director's instructions of July 31, 1990, were not produced for the record, it is clear from the above-quoted testimony that the claimant failed to comply with said instructions. Accordingly, and notwithstanding the aforementioned technical defect in the Carrier's decision, an implied contract exists between an employer and its employees to the effect that employees are required to comply with clear and reasonable instructions. It appears that the instructions involved in the instant case were

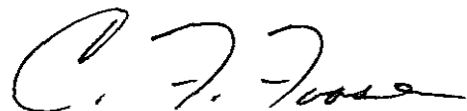
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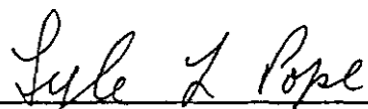
clear and reasonable, notwithstanding the claimant's contentions to the contrary.

Under the circumstances of this particular case and in view of the serious nature of the violation, the Board finds no basis for sustaining the claim.

AWARD: Claim denied.

  
G. Michael Garmon, Chairman

  
Employee Member

  
Carrier Member

Dated at Chicago, IL:

December 27, 1990