

PUBLIC LAW BOARD NO. 2774

Award No. 59
Case No. 77

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees
and
The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "1. That the Carrier violated the terms of the Parties' Agreement when on August 5, 1981 they arbitrarily severed the seniority and employment relationship of Trackman E. Alexander, said action being arbitrary and without good and sufficient cause.

2. That Claimant E. Alexander be restored to his former position of trackman with seniority, vacation and all other rights unimpaired and, in addition, he be compensated for loss of earnings suffered account the Carrier's improper action."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant herein had been on one week's vacation beginning June 29, 1981. On July 3, he contacted the Roadmaster's clerk advising that he had been in an accident and would need another week's vacation

which was granted. He did not return to duty on July 13th but was advised several times that if he required additional time off it would be necessary that he fill out and submit leave of absence papers. Claimant again contacted Roadmaster's clerk on July 20, 1981, advising that he needed leave of absence papers. The documents were forwarded to him to his home address, along with the advice that they should be filled out and promptly returned with an accompanying statement of support from his doctor. The leave of absence papers were never returned. Subsequently, claimant admitted that he had left the papers with his doctor for completion. As a result of this action on the part of claimant, by letter dated August 5, 1981, he was notified that his seniority and employment were terminated due to his being absent without proper authority.

It is clear for the record that claimant was negligent in following the prescribed rules which were relevant to his absence. Instead of filling out the leave papers, he left them with his physician and they were not, indeed, completed until long after the fact. Thus there is no doubt but that from a strict point of view claimant was guilty of a serious infraction and was, indeed, absent without proper authority. On the other hand, it is also apparent that Carrier was aware of the basis for claimant's absence. He had informed Carrier that he had suffered an accident and that fact was later demonstrated by the submission of various medical reports. The petitioner argues persuasively that the provisions of the agreement dealing with absence without leave (the July 13, 1976, letter of understanding) did not purport to deal with employees such as this. That agreement was designed to handle

the problem of employees who had abandoned their positions. In this case, according to the petitioner, since the Carrier was aware of the reason for claimant's absence and was aware of the fact that he was unable to protect his assignment for reasons beyond his control, it was incorrect to terminate him under the July 13th letter.

The Board concludes that, although discipline was clearly warranted in view of claimant's failure to abide by Carrier's procedures and file the leave in timely fashion, the discipline in this instance was excessive and should be mitigated.

AWARD

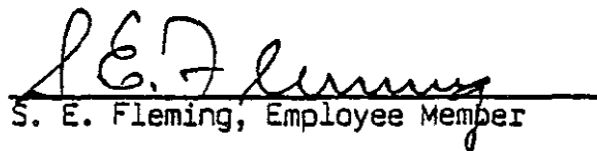
1. The discipline in this instance was excessive and shall be modified. Claimant shall be restored to his former position with all rights unimpaired but will not be compensated for time lost.
2. Claimant's restoration to duty will be subject to the medical clearances required by Carrier.

ORDER

Carrier will comply with the award herein within thirty days from the date hereof.


I. M. Lieberman, Neutral Chairman


G. M. Garmon, Carrier Member


S. E. Fleming, Employee Member

April 29, 1983
Chicago, Illinois

1131P