

NATIONAL MEDIATION BOARD, ADMINISTRATOR  
SPECIAL BOARD OF ADJUSTMENT NO. 957

In the Matter of the Arbitration

-between-

Brotherhood of Maintenance of  
Way Employes

-and-

Southeastern Pennsylvania  
Transportation Authority

OPINION AND AWARD  
Award No. 262

In accordance with the September 26, 1999 agreement in effect between the above-named parties, the Undersigned was designated as the Chairman and Neutral Member of the SEPTA-BMWE Public Law Board (the Board) to hear and decide the following Claim:

1. The thirty (30) day suspension and disqualification of Track Maintainer Second Class Josue Gauthier for his alleged violation of SEPTA Work Rule No., 42 - Absence from Assigned Work Area on January 13, 1998 was without just and sufficient cause (System File 98-006-F12).
2. The Carrier's decision to terminate the seniority of Track Maintainer Second Class Josue Gauthier for allegedly abandoning his position was without just and sufficient cause, arbitrary and capricious (System File 98-006-F12).
3. As a consequence of the violation referred to in Parts (1) and/or (2) above, Track Maintainer Second Class Josue Gauthier shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

A hearing was held in Philadelphia, Pennsylvania on March 20, 2003 at which time the Grievant and representatives of the

parties appeared. All concerned were afforded a full opportunity to offer evidence and argument and to examine and cross-examine witnesses consistent with the relevant procedures that exist between the parties. The Arbitrator's Oath was waived. The Board met in Executive Session after the hearing.

FINDINGS OF FACT AND OPINION OF THE BOARD

The record indicates that the Claimant began working for the Employer on March 26, 1990 and served as a Track Maintainer. The record substantiates that the Claimant, who occupied a safety-sensitive position, was absent from his work assignment on January 13, 1998. In particular, the record reflects that the Claimant left his worksite without permission and remained away from the worksite over an extended period of time on January 13, 1998. In fact, the evidence describes that the Claimant failed to attempt to return to his worksite until certain supervisory personnel observed the Claimant attempting to travel in an opposite direction from his assigned work location.

In response to the special circumstances that existed in connection with the Claimant's behavior, the credible evidence confirms that the Employer permitted the Claimant to participate in the Rehabilitation After Work Program. On March 1, 1998, the Claimant executed a "Special Therapeutic Contract" that required the Claimant to refrain from using certain substances and beverages; that obligated the Claimant to attend all scheduled treatment sessions in a timely manner; and that contained additional obligations for the Claimant. (Employer Exhibit 13.)

The record is uncontroverted that as of March 13, 1998 the Claimant had failed to comply with the conditions of the March 1, 1998 contract and therefore was discharged from the Rehabilitation After Work Program.

The Employer subsequently notified the Claimant in a letter, dated April 6, 1998, that the Employer was considering terminating the Claimant for failing to comply with the requirements of the Rehabilitation After Work Program. (Employer Exhibit 15.) After the Claimant had failed to contact the Employer, the Employer issued a letter, dated May 4, 1998, that terminated the Claimant for abandoning his job. (Employer Exhibit 16.) Moreover, the record substantiates that the Claimant became incarcerated from November 12, 1998 to March 6, 2000 due to certain events that arose in connection with a domestic dispute.

A careful review of the record proves that the Claimant unilaterally left his work assignment on January 13, 1998; failed to make a reasonable effort to contact appropriate supervision about his situation in a timely manner; and failed to make a reasonable effort to return to work. Despite these failings by the Claimant, the record indicates that the Employer provided the Claimant with an opportunity to address his chemical dependency problem. The record establishes that the Claimant failed to comply with the terms of the rehabilitation program.

Under all of these circumstances, the Employer had a right to impose the initial 30 day suspension because of the Claimant's

absence from his assigned work area in violation of Rule No. 42 and a further right to terminate the Claimant for subsequently abandoning his position. The record includes certain documentary evidence that indicates the Claimant served as the Head Custodian at an elementary school from April 2001 until August 2001 and that he performed his job particularly well. (Employees' Exhibit A-15.) The record also contains other documentary evidence that describes the Claimant's leadership and other positive activities from November 1998 through March 6, 2000. (Employees' Exhibit A-15.) These favorable achievements, however, occurred after the Employer had initiated disciplinary action against the Claimant and do not absolve, excuse, or negate the Claimant's failure to adhere to the reasonable rules and requirements of the workplace.


The Award therefore shall reflect that the Claim is denied. Any other arguments raised by the parties during this proceeding do not affect the outcome of the present dispute.


Accordingly, the Undersigned, duly designated as the Chairman and Neutral Member of the SEPTA-BMWE Public Law Board and having heard the proofs and allegations of the above-named parties, makes the following AWARD:

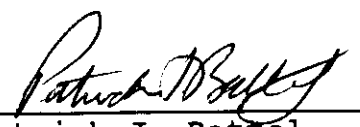
1. The thirty (30) day suspension and disqualification of Track Maintainer Second Class Josue Gauthier for his alleged violation of SEPTA Work Rule No., 42 - Absence from Assigned Work Area on January 13, 1998 was with just and sufficient cause (System File 98-006-F12).
2. The Carrier's decision to terminate the seniority of Track Maintainer Second Class Josue Gauthier for allegedly

abandoning his position was with just  
and sufficient cause, and was not  
arbitrary and capricious (System File  
98-006-F12).

3. The Claim is denied.

  
Robert L. Douglas  
Chairman and Neutral Member

  
D. D. Bartholomay  
Employee Member  
Concurring/Dissenting

  
Patrick J. Battel  
Carrier Member  
Concurring/Dissenting

DATED: 4/4/03