

PUBLIC LAW BOARD NO. 2439

Award No. 44
Case No. 44

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE Southern Pacific Transportation Company (Pacific Lines)

STATEMENT
OF CLAIM

- "1. That the Carrier violated the Agreement when a letter dated February 20, 1981 advised Mr. Samuel Williams to the effect that evidence adduced at hearing held February 11, 1981 established his responsibility in connection with his continued failure to protect his employment, particularly in having been absent without authority for a total of thirty-nine and one half (39½) days from July 1, 1980 through December 31, 1980 which constitutes violation of Carrier's Rules 802 and M-810, and for such reason thereby suspended Claimant from the service of the Carrier for a period of forty-five days commencing March 1, 1981 through April 14, 1981, said action being excessive, unduly harsh and in abuse of discretion.
2. That Mr. Samuel Williams now be compensated for net wage loss suffered as a result of an improper suspension beginning March 1, 1981 through April 14, 1981 as well as any expenses he may have incurred on February 11, 1981 while attending the formal hearing, and the charges placed on his personal record be removed therefrom."

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 was notified by letter dated January 27, 1981 to be present at an investigation on February 11, 1981: ".... in connection with your continued failure to protect your employment, particularly in your having been absent without proper authority for a total of thirty-nine and one half days during the period from July 1 through December 31, 1980...." Following the investigation, Claimant was assessed a forty-five day disciplinary suspension.

Petitioner's position essentially is that first the hearing was unfair and improper in view of the fact that first the charges were not specific enough to indicate the precise dates of absence charged and further, there was introduced at the hearing, three letters from 1975 and 1979 which should not have been made part of the record. Further, it is argued that Claimant did indeed report his intended absence on a number of occasions and used as the rationale for such absence, the fact that he had automobile trouble or in other instances was physically unable to report for work due to illness. Finally, the Organization insists that even if there were disciplines imposed as a result of this matter, the discipline in this instance was excessive in the light of the testimony.

Carrier argues that in this instance there was clear and unequivocal guilt on the part of Claimant. First the entire matter was triggered by Claimant walking off the job at 11:00 A.M. without permission on December 31, 1980. Further, Carrier points out that according to the testimony indicated, even though Claimant occasionally called in in expectation of being absent, in no instance would he request authority for such absence but merely reported that he would not be in. Carrier also indicated that Claimant was counseled by his supervisors on five occasions during the period in question and his disrespect for Company rules, by his continued absenteeism, got worse rather than improving following these counselling sessions. Carrier indicates that the average employee misses approximately one day per month while in this instance, Claimant was absent almost thirty-one percent of the time during the six month period in question. Carrier indicates that Claimant worked a full five day work week on only three occasions during the entire period. Thus, Carrier concludes that the discipline involved which was based on the specific infractions of Company rules indicated by the testimony and by the Notice of Hearing was warranted, particularly in view of the earlier warnings which were introduced into the record.

With respect to the Notice of Hearing, the Board finds that Claimant and his representative did not object to any aspect of the charge at the time of the hearing although

afforded the opportunity to do so. Further, with respect to the objections concerning the letters introduced into the record of the hearing, the Board points to the fact that these letters were used in determining the quantum of discipline involved and apparently were not at all involved in the determination of the guilt of the particular charge in this instance.

With respect to the basic issue involved herein, there is no doubt that Claimant had been absent without authority for approximately one-third of the working days during the period charged. While Claimant in his testimony indicated that a good proportion of his absences were caused by back related problems resulting from an earlier (1977) work connected injury, there was no medical evidence to support this contention. In fact there was no rationale for any of the absences presented at the hearing (or prior to that time to the supervisors) to support Claimant's allegations with respect to the reasons for his absences. Under the circumstances the Carrier was correct in assuming that there was significant and substantial evidence to support its conclusion with respect to the charge. Concerning the quantum of discipline assessed, in view of the excessive absenteeism and the counseling sessions which had been held, there is no doubt but that the discipline assessed was neither excessive nor arbitrary or capricious. Thus, the claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman



L.C. Scherling, Carrier Member



S.E. Fleming, Employee Member