

PUBLIC LAW BOARD NO. 2535

Joseph Lazar, Referee

AWARD NO. 3
CASE NO. 3

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO) VS.
DISPUTE) JOINT TEXAS DIVISION OF CHICAGO, ROCK ISLAND AND
PACIFIC RAILROAD COMPANY AND FORT WORTH AND DENVER
RAILWAY COMPANY

STATEMENT
OF CLAIM:

That the Carrier violated the Agreement when as a result of an investigation conducted September 21, 1979, they dismissed Section Laborer G. A. Thompson III from the service, said dismissal being unjust, arbitrary and capricious.

That Claimant G. A. Thompson III be reinstated to the service with seniority, vacation and all other rights unimpaired and additionally that he be compensated for all wage loss suffered account the Carrier's improper action.

FINDINGS :

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employee and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

On October 1, 1979, Carrier dismissed Claimant G. A. Thompson III from service "for violation of Rules 600, 665 and 667 of Burlington Northern Safety Rules in connection with failure to comply with instructions from proper authority and absenting himself from duty without proper authority on Section No. 3 at Karen, Texas September 11 and September 13, 1979, as disclosed in investigation afforded him on Friday, September 21, 1979 at Teague, Texas."

Rule 600: "The fact that an employee may not have been examined on certain rules or regulations will not be accepted as an excuse for failure to be conversant therewith."

Rule 665: "Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority."

Rule 667: "Employees must comply with instructions from the proper authority."

Concerning the incident of September 11, 1979:

On September 11, 1979, Claimant reported for work fifteen minutes early, 7:45 a.m., helped gas the motor car, and did other preparatory tasks. About five minutes before eight, he went to his car to change shirts, and a co-worker came up to tell him about certain developments affecting his job. By the time Claimant had changed shirts and talked, Claimant's Foreman and another co-worker had put the motor car on the track, and it was then about a few minutes past eight. The car wouldn't start, and as Claimant and the co-worker with whom he had been talking approached the car, it is alleged that the Foreman began cursing and used strong profanity directed at Claimant and co-worker for not being helpful but sitting in Claimant's car talking. Claimant testifies that he was advised by the Track Supervisor that when the Foreman "cuss me when we are on the job, to report this, so that is the reason I left. I did not walk off just because. I got in my car with (co-worker) and we went to Tomball to report the incident." The co-worker testified (transcript, p. 10) that they talked to the Track Supervisor "and he said for us to go home ~~that~~ day and told us to report on the twelfth."

In the testimony of the Foreman, there is no denial of the described incident, including the use of obscenities by the Foreman directed at Claimant and co-worker. The Investigating Officer of the Carrier did not call the Track Supervisor as a witness.

The evidence of record supports the finding that Claimant, on September 11, 1979, left the work site in compliance

and in reliance on the authority of the Track Supervisor. The Track Supervisor obviously used good judgment in facilitating an orderly and peaceful process of coping with potentially disruptive verbal, and, conceivably, physical altercation. Clearly, the Organization in the present case is utilizing and is in full compliance with the spirit and letter of the Railway Labor Act in seeking a proper remedy in the circumstances of this case.

The incident of September 11, 1979 affords no basis of justification for dismissing Claimant.

Concerning the incident of September 13, 1979:

The circumstances on this date are related by the Claimant's fiancée (Transcript, p. 8):

"I am his fiancée and on the night of the thirteenth, approximately two, or early morning, I called him because I had a chest pain and he came over and he stayed with me the rest of the night. He wanted to take me to the hospital, but I wanted to wait to see if it would go away. About four o'clock he fell asleep, but he told me if he did fall asleep to take this number and call and tell them he wouldn't be in to work. About 6:30 or 7:00 I did call and I talked to a gentleman and I told him George was taking me to the hospital and before I could ask him who I was talking to, he hung up.

"Q. ...do you know the number as to who you called and notified?

"A. Yes, I have the number here. I called 739-2371.

"Q. You say you don't know who you talked with?

"A. No. It was a gentleman that answered the phone and I told him that George was taking me to the doctor and I asked who am I talking with and the phone hung up.

"Q. ...was that 817 code area, or do you know what area code you were dialing?

"A. No, I dialed '1' and then the number so I dialed direct.

"Q. After making this call what steps were taken in your condition?

"A. After I made the call I got George up and told him I needed to go to the doctor. It was time for me to go to the doctor, or to the emergency room. So he took me to the emergency room and the nurse there told me to go see a private doctor, which I did.

"Q. ...do you have something as a record showing the date and the doctor you saw with this?

"A. Yes, I do. I have a receipt and the medication that was given to me.

"NOTE: Fiancee "presented a receipt from a doctor and two types of medicine, all dated September 13, 1979.

"Q. ...did the doctor explain to you what the chest problem was?

"A. Yes, he said that I had a strained muscle to my heart and told me to go home and take it easy."

There is no dispute about the fact that Claimant did not call his Foreman or make any effort to call his Foreman. His testimony (Transcript, p. 14) is that:

"...I was told by my supervisor other than (Foreman) that I need to take off I could call some one, even Tomball, Teague, or Foreman. I did not call Foreman. I have taken off before because of some illness, or transportation problem, and I call Tomball or Teague. I was told I could call anyone from the railroad and they would relay a message to him."

The testimony of the Foreman (Transcript, p. 5), is that:

"Q. What are your instructions to your crew members in connection with being absent from duty?

"A. I tell them all the time to call me at my home, let me know something. I give him my phone number. I tell him if he continue missing work it could go against his record and he could be terminated. One day not work and it hurt himself and it hurt _____ and I.

"Q. You need your full crew to perform your duties?

"A. Yes."

On the facts of record, the telephone call made by Claimant's fiancée did not reach the Claimant's Foreman. Given the circumstances of medical emergency facing Claimant's fiancée, the failure of Claimant to call the Foreman, or to communicate with him, that he would be absent on September 13, is quite understandable. Nevertheless, Claimant failed to inform his Foreman, directly or indirectly, and placed himself in the jeopardy he found himself in.

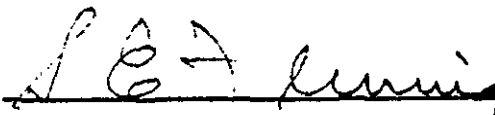
A W A R D

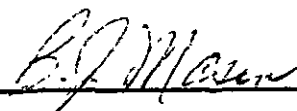
1. On the incident of September 11, 1979, the Carrier is in violation of the Agreement.

2. On the incident of September 13, 1979, the Carrier is not in violation of the Agreement.

3. The Carrier shall reinstate Claimant G. A. Thompson III to the service with seniority, vacation and all other rights unimpaired, but his claim for compensation for all wage loss suffered is denied.


JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER


S. E. FLEMING, EMPLOYEE MEMBER


B. J. MASON, CARRIER MEMBER

DATED: Dec 16, 1981