

PUBLIC LAW BOARD NO. 2774

Award No. 2
Case No. 5

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
The Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the dismissal of Los Angeles Division Foreman C.D. Galvane was unjust.
2. That C.D. Galvane should be reinstated to service with seniority, vacation and all rights unimpaired, pay for wage loss and/or otherwise made whole."

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 employed by Carrier on May 23, 1974 as a Trackman. He was promoted to a Foreman in December of 1975. Following an investigation held on March 10, 1980, Claimant was dismissed by Carrier for the following:

"....not following instructions, releasing members of Gang 52 at approximately 12 noon, Friday, February 15, 1980, and leaving job site at Barstow early without proper authority and falsifying payroll records for February 15, 1980 involving violations of Rules "C" "E" 752 (A), 776, 777, 1062, 1063 of Rules for Maintenance of Way and Structures"

The record indicates that on February 14, 1980 Claimant after discussion with his supervisor allowed his gang to quit early since conditions were such that they could not perform their functions effectively. Without denial it is clear that on February 15, 1980, without consultation of the supervisor, the Foreman (Claimant herein) dismissed his gang at approximately noon or shortly thereafter. It had been rainy off and on that day and Claimant felt that the tamping activity of his crew was not being performed properly

because of the weather. The record indicates further that the payroll records submitted included the projection of eight hours work and that Claimant, in attempting to correct the matter, did not follow normal procedure and the correction was not made in the normal course of events for the shortened work day.

Carrier argues that it is clear from the evidence that Claimant herein released his gang without authority and furthermore, falsified the payroll records by claiming a full eight hours pay for the entire gang. Carrier states that on a preceeding day, Claimant received authority from a supervisor to release his gang but did not do so on the day in question herein. Furthermore, Carrier states that there is no evidence to support the contention that Claimant attempted to correct the time records. Carrier concludes that in view of the serious nature of the offense committed and Claimant's poor record (he had fifty demerits on his record) it's decision to terminate him was appropriate.

Petitioner argues that the discipline decision was not supported by substantial evidence. Furthermore, the Organization insists that Claimant was not accorded a fair and impartial investigation in view of the conduct of the Hearing Officer and furthermore, by virtue of the fact that he was not furnished a copy of the transcript in timely fashion as required by Article 5, Section 5 of the Collective Bargaining Agreement. Petitioner insists that there is no indication whatsoever that any rule precluded a Foreman deciding to release his men. Nor was there any indication that the Claimant herein had instructions to hold his men on duty under the circumstances. Thus, the Organization states that Claimant properly discharged his responsibility in deciding that further work during inclement weather was inappropriate on the day in question. Additionally, Petitioner insists that there is no evidence that Claimant left the job site without proper authority. While recognizing that Claimant could indeed have conferred with the Road Master before he left Carrier's property, it was not inappropriate for him to do so without consultation. With respect to the payroll question, the Organization argues that Claimant properly filled out the projected payroll and attempted to adjust the

hours based on the shortened work day in question. Thus, there was no intent to defraud involved in this case whatever according to Petitioner.


The Board notes that Claimant herein had been a Foreman for a number of years (approximately five) prior to the incident involved in this dispute. He clearly should have known the procedures to be followed under circumstances similar to those involved in this matter. The fact that he did dismiss his crew without consultation and took the inappropriate route to correct the time sheets was clearly a matter of extremely poor judgment on his part at minimum. However, in the Board's view, based on the objective circumstances presented by the transcripts and the additional material in the record, the dismissal decision by Carrier was inappropriate. Recognizing Claimant's two prior infractions (and consequent demerits) dismissal after the particular events involved herein was harsh and discriminatory in our judgment. The Carrier was right, however, to seriously question the validity of Claimant's actions on the day involved. Thus, it is the Board's view that Claimant should be reinstated to the position of Trackman with the possibility of future promotion to Foreman should the Carrier so decide, but without compensation for time lost.

AWARD

1. Claim sustained in part;
2. Claimant shall be reinstated to the position of Trackman with seniority and all other rights unimpaired but will receive no compensation for time lost.

ORDER

Carrier shall comply with the Award herein within thirty (30) days from the date hereof.


F.M. Lieberman, Neutral-Chairman


Employee Member


Carrier Member