

PUBLIC LAW BOARD NO. 3445

AWARD NO.: 32

CASE NO.: 32

PARTIES TO DISPUTE

Brotherhood of Maintenance and Way
Employees
and
Southern Railway Company

STATEMENT OF CLAIM

Laborer, Malcolm Jacobs, Rt. 3, Box 344, Eubank, KY 40489 was dismissed from service on May 21, 1984, for allegedly failing to protect his assignment. Claim was handled on the property in accordance with Railway Labor Act and Agreement provisions. Employees request reinstatement with back pay for all lost time and all other rights unimpaired.

FINDINGS

Claimant, at the time of the dispute in question, was employed as a track laborer at Lexington, Kentucky. By letter dated May 28, 1984, Claimant was notified to attend an investigation concerning charges that he failed to protect his assignment on January 30, 1984 and thereafter. An investigation was held on June 11, 1984. By letter dated June 15, 1984, Claimant was dismissed from service on the basis of his adjudged guilt

concerning the charges.

The issue to be decided in this dispute is whether Claimant was dismissed for just cause under the Agreement.

The position of the Organization is that Carrier failed to justify the discipline imposed.

Initially, the Organization contends that Claimant followed proper procedure regarding his absence on January 30, 1984. The Organization argues that Claimant instructed his brother to inform Carrier that he would be unable to report on January 30, and that Claimant's brother did in fact inform Carrier. The Organization further argues that Carrier was notified of Claimant's need for an extended leave of absence due to criminal charges pending against him, and that Carrier led Claimant to believe that his leave of absence was granted. The Organization therefore argues that Claimant was wrongly charged with failure to protect his assignment, since he returned to fulfill his assignment at the earliest possible opportunity.

Carrier contends that Claimant was properly dismissed for a series of unexcused absences dating from January to May of 1984.

Carrier asserts that there is no dispute regarding Claimant's

approximate four-month absence from work beginning January 30, 1984. Carrier maintains that Claimant never either personally requested or was granted a leave of absence. Carrier further maintains that the request made by a member of Claimant's family for the leave of absence was specifically denied, and that any belief on Claimant's part regarding the granting of the leave was therefore without basis. Finally, Carrier argues that any permission for an extended leave of absence must be given in writing according to the Agreement; and that there can be no question therefore that Claimant received no authorization for his absences.

Carrier maintains that Claimant was justifiably dismissed for his extends period of unexcused absenteeism; and that Claimant's excuse of being incarcerated for the period in question neither justified his absences nor required Carrier to grant a leave of absence.

After review of the record, the Board finds that the Organization's claim must be denied.

It is not the purpose of this Board to rehear an investigation that Carrier held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

Carrier has sustained the charges against Claimant through substantial evidence. There is no dispute of fact concerning either Claimant's extended absence or his failure to personally obtain permission for those absences. The Organization has presented no evidence that at any time Carrier either expressly or implicitly approved Claimant's request for a leave of absence. Absent such evidence, we cannot find that Claimant had any basis for assuming that his absences were excused. The Agreement specifically requires that any grant of an extended leave of absence be in writing, which Claimant admitted never receiving from Carrier. Finally, we do not find any extenuating circumstances that might otherwise excuse Claimant's failure to receive permission for his absences. Claimant's incarceration does not excuse his inability to protect his assignment, and Carrier was under no obligation under the circumstances to grant a leave of absence. Given Claimant's extended and unexcused record of absenteeism, we do not find that Carrier abused its discretion in dismissing him from its employ.

AWARD

Claim Denied.

Nicholas H. Kuma
Neutral Member
St. Miller
Carrier Member
Bryce L. Hall
Organization Member

Date: Oct 1, 1987