

PUBLIC LAW BOARD NO. 3445

AWARD NO.: 33

CASE NO.: 33

PARTIES TO DISPUTE

Brotherhood of Maintenance of Way  
Employees  
and  
Southern Railway Company

STATEMENT OF CLAIM

Track Laborer, R. J. Cannon, 2480 Nowlin Circle, Acworth, GA 30101 was dismissed from service on July 6, 1984 for alleged failure to protect his assignment from May 4, to May 21, 1984. 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 laborer at Rockmart, Georgia. By letter dated May 21, 1984, Claimant was notified to attend an investigation concerning charges that he failed to protect his assignment on May 4, 1984 and thereafter. An investigation was held on June 26, 1984. By letter dated July 6, 1984, Claimant was dismissed from service on the basis of his adjudged guilt concerning the aforementioned

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 Claimant was wrongfully dismissed by Carrier on the basis of the charges.

The Organization contends that Claimant acted properly and responsibly with regard to his absences on the date in question. The Organization alleges that Claimant was unable to protect his assignment on those dates due to his incarceration on May 3, 1984. The Organization further alleges that Claimant notified Carrier of his predicament at the earliest possible opportunity and requested either a leave of absence or a vacation leave. The Organization maintains that under the circumstances Claimant did everything in his power to protect his assignment, and that Carrier acted arbitrarily in dismissing him on the basis of the unexcused absences.

The position of the Carrier is that Claimant was properly dismissed for his failure to protect employment on the date in question.

Carrier contends that there is no dispute of fact concerning

Claimant's failure to protect his assignment. Carrier cites Claimant's own testimony admitting that he was absent without permission. Carrier further cites the fact that Claimant had no eligibility for vacation time, and that therefore his request for such time in no way excused his absences. Finally, Carrier argues that it was under no obligation to grant Claimant a leave of absence under the circumstances, maintaining that its policy is not to grant leave where an employee is unable to work due to incarceration. Carrier further asserts that any decision regarding leaves of absence is discretionary, and that it clearly acted within its discretion in denying leave. Carrier concludes that Claimant's absences were not excused in any way by his incarceration, and that he was justifiably dismissed for failing to protect his assignment between May 4, 1984 and May 21, 1985.

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.

Initially, we find that Carrier has sustained the charges against Claimant through substantial evidence. There is no

dispute of fact concerning Claimant's failure to protect his employment on the dates of issue. Further, the Organization has presented no evidence indicating that any of the absences were excused either explicitly or implicitly by Carrier. Claimant's inability to protect his assignment due to incarceration does not serve as a legitimate excuse for his absences. Additionally, Carrier was not obligated under the circumstances to grant a leave of absence pending the disposition of Claimant's criminal charges. Therefore, we find that in light of the charges at issue and Claimant's prior disciplinary problems, Carrier acted within its discretion in dismissing Claimant.

AWARD

Claim Denied.

*Nicholas P. Rivas*  
Neutral Member  
*Atman*  
Carrier Member  
*Bryce L. Hall*  
Organization Member

Date: Oct 1, 1987