

PUBLIC LAW BOARD NUMBER 3445

Award Number: 74

Case Number: 74

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claim on behalf of Chattanooga Laborer F.B. Nard, Jr. for pay at his respective laborer's rate for all time lost from March 24 through May 25, 1987 account of being suspended account not properly protecting his assignment and not following written instructions.

FINDINGS

Claimant entered the Carrier's service on March 4, 1980.

By letter dated March 27, 1987, Claimant was ordered to attend a formal investigation on charges that he failed to protect his assignment and that he was insubordinate. The investigation was postponed once and was held on April 9, 1987. By letter dated April 17, 1987, Claimant was suspended for 60 days based on evidence adduced at the investigation supporting the charges against him.

The issue to be decided in this dispute is whether Claimant was suspended for just cause under the Agreement; and if not, what should the remedy be.

On February 17, 1987, Claimant exercised his displacement rights into Surfacing Gang No. 3. At the same time, he signed a copy of the Carrier's January 1, 1987 instruction which notified employees that they must obtain permission prior to being absent from work; failure to do so would subject them to discipline.

Claimant was late for work once and left work early once both in early March 1987. On both occasions, he complied with the January 1, 1987 letter of instruction as to notice to his supervisor.

On March 24 (one day after Claimant's gang moved from Chattanooga to Valley Head, Alabama) Claimant was late to work. He did not contact his supervisor prior to arrival. He reported for duty 20 minutes late, but his gang had already departed for its job site. Claimant made his way to the site in his personal vehicle but on arrival was not permitted to go on duty.

At the investigation, Claimant's supervisor testified that on March 23, Claimant had sought to be released from duty on March 24. Machine Operator C. E. Hicks testified that Claimant had intended to be late on March 24 and asked Hicks to "cover" for him.

The position of the Carrier is that Claimant was suspended for just cause under the Agreement. The Carrier maintains that Claimant knew of the procedures regarding absences from work including the notification requirement and the discipline potential for violation. The Carrier contends that it has proved that Claimant did not protect his assignment on the morning of March 24 and that he had planned to be absent as early as the previous day.

The Carrier argues that Claimant's discipline was warranted based on his failure to protect his assignment and his insubordination as to the provisions of the January 1 letter.

The position of the Organization is that Claimant was suspended without just cause. The Organization acknowledges that Claimant was late to work. It maintains that he was late because he got lost and that the supervisor wrongly refused to let him assume his duties. Further, the Organization contends that Claimant was not insubordinate because he exhibited no "unwillingness to submit to authority." Finally, the Organization contends that the discipline of 60 days suspension is unduely harsh.

After review of the entire record, the Board modifies the discipline in this case and reduces it to a period of 15 days. Claimant is to receive back pay, benefits and seniority for the balance of the 60 days for which he was suspended.

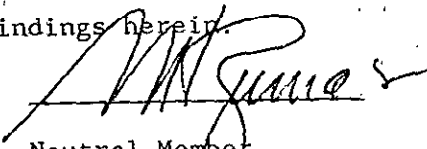
The Carrier has established by substantive credible evidence in the record that Claimant was late to work on March 24, 1987. There is not sufficient basis, however, to say that he was more than 20 minutes late. Moreover, while he was late, the Organization has established that there was no intent to challenge the lawful authority of the Carrier. While Claimant did not comply with the instruction to be at work on time, that is the implied requirement in every employment situation in the work place. It is unreasonable for the Carrier to construe every failure to protect an assignment as insubordination. Moreover, even if this were insubordination, the severity of the suspension is disproportionate to the offense committed.

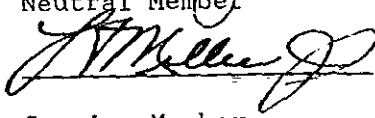
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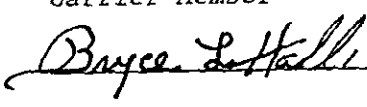
Therefore, the more appropriate disposition is a reduction of the suspension period to 15 days with back pay, benefits and seniority restored for the remainder of the period.

AWARD

Claim disposed of per Findings herein.

  
Neutral Member

  
Carrier Member

  
Organization Member

Date: FEB. 22, 1990