

PUBLIC LAW BOARD NO. 3558

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SOUTHERN PACIFIC TRANSPORTATION COMPANY (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of Machine Operator Ruben Navarro for reinstatement to his former position with pay for all time lost, with seniority, vacation and all other rights unimpaired, alleging unjustly dismissed."
(MW-83-126/403-62-A)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee respectively within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Claimant, an employee of Carrier for approximately three years, was dismissed from service account being absent from work on September 22 and 23, 1983 without proper permission.

It is the Carrier's position that Claimant was familiar with standard procedures for laying off, essentially, that it was necessary to obtain permission by calling either the District Manager or the Foreman of his gang before working hours. It submits that in the past Claimant has called the District Manager at the office and at home and has also called his Foreman in the past at his home relative to such matters. The Carrier also maintains that the mere fact Claimant contacted an Operating Agent to relay a message to the District Manager did not constitute a following of proper procedures to obtain permission to be absent from work, and that the District Manager was at his office from 6:30 a.m. to 8:30 a.m. on the first date in question, asserting this provided ample time for Claimant to have called direct prior to the start of his scheduled work assignment at 7:00 a.m.

The Organization urges that it was necessary Claimant attend the funeral of Claimant's first cousin and that when Claimant determined that the District Manager had not yet arrived at his office on September 22, 1983, that he left a message with the Operating Clerk to tell the District Manager he would be absent for the next two days. In this connection, the Organization states that it was brought out at the hearing that on at least a past occasion Claimant had been allowed to lay off after contacting the Clerk when he had been unable to reach the District Manager. The telephone call to the Operating Clerk was made, according to the Claimant, at about 6:00 a.m.

A written statement from the Operating Clerk, dated October 4, 1983, and introduced at the October 13, 1983 company hearing by Claimant's representative read as follows:

"ALL CONCERNED:

CONCERNING MATTER ABOUT RUEBEN NAVARRO CALLING IN ABOUT 2 OR 3 WKS AGO SAYING COULD NOT MAKE IT TO WORK ACCT HAD TO GO TO FUNERAL, I DID LET MR. REINHARDT KNOW THAT MR. NAVARRO LAYED OFF FUNERAL BUSINESS BUT I COULD NOT THINK OF HIS NAME BUT I TOLD MR. REINHARDT IT WAS THE SAME BOY THAT HAD LAYED OFF ACCT CAR TROUBLE A FEW WEEKS PAST."

In our judgment, a careful reading of the transcript shows that Claimant was aware of the proper procedures for calling in to report an absence from duty, and recognized that calling and leaving a message to be forwarded by the Operating Clerk was perhaps not going to be sufficient notification. Actually, at the company hearing, Claimant admitted he did not have permission to be off work for the two days in question. The record also shows that he did not offer an explanation as to why it was not possible for him to have again called the District Manager's office prior to his 7:00 a.m. reporting time, nor did he offer any probative evidence to substantiate the death and funeral of his first cousin. At the same time, we recognize that the hearing officer did not examine Claimant relative to such matters, although Claimant did touch upon the latter subject in response to questions by his representative, particularly as concerned the District Manager having questioned him on September 26, 1983 as to the name of the deceased and having told Claimant that the name he had presented was not listed in "the paper".


There being no doubt Claimant was absent without proper permission, the only question before this Board is whether or not dismissal was too severe a penalty under the circumstances of record, notwithstanding Claimant had in the past been assessed discipline account absenteeism. In our view, we think the record warrants Claimant's reinstatement to service with seniority and all other benefits unimpaired, but without payment for time lost. He is admonished, however, to exhibit a more concerned sense of responsibility toward his employment obligations as being necessary and critical to any continuing employment relationship. The Claimant should recognize that while one can appreciate a need for an employee to be excused from a work obligation to attend to an occasional, but unfortunate family or personal problem, no carrier or company is obliged to keep in its employ an employee who cannot effectively be available for work on a continuing basis.


AWARD:

Claim sustained to the extent set forth in the above Findings.

ORDER:

The Carrier is directed to make this Award effective within 30 calendar days of the date set forth below.


Robert E. Peterson, Chairman
and Neutral Member


C. B. Goyne, Carrier Member


M. A. Christie, Employee Member

San Antonio, TX
June 30, 1984