

PUBLIC LAW BOARD NO. 3558

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

AWARD

STATEMENT OF CLAIM:

- "1. Carrier violated the effective Agreement when Laborer-Driver D. L. Gillum was unjustly suspended from service.
2. Claimant Gillum shall now be paid for eighty (80) hours at his straight time rate of pay and his personal record cleared." (MW-86-131)

OPINION OF BOARD:

Claimant, a Laborer-Driver on Extra Gang 435 headquartered in Hempstead, Texas, holds a service date of March 18, 1976. By letter dated July 18, 1986, Claimant was issued a ten day suspension for being absent without proper authority in alleged violation of Rule 604. After hearing on August 18, 1986, and by letter dated August 26, 1986, the Carrier affirmed the disciplinary action.

On July 16, 1986, between 6:30 and 6:45 a.m. (prior to Claimant's starting time), Roadmaster J. W. Duke received a phone call from an unidentified woman stating that Claimant wanted her to call in and inform Duke that Claimant would not be at work. Duke did not ask the caller for reasons that Claimant would not be in, but told the woman to tell Claimant to come to work because he was needed. Claimant did not report on that date. Duke informed Claimant's immediate supervisor, I & R Foreman R. S. Jones, that Claimant would not be there and that when Claimant reported, Jones was to inform Claimant that he was being assessed a two week suspension without pay. At no time did

Duke or Jones question Claimant or take other steps to ascertain the reasons for Claimant's absence on July 16, 1986.

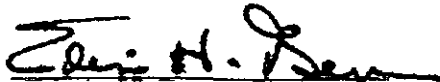
Claimant testified that he has no phone in his house and the nearest phone is 1/4 mile away. On the morning of July 16, 1986, Claimant had his girlfriend call Duke because he was ill and was taking prescription medication that made him drowsy. Claimant asserts that on July 16, 1986, he was too ill to get out of bed. Claimant testified further that when his girlfriend informed him that he was nevertheless wanted at work, Claimant took no other steps to contact the Carrier. Claimant also testified that he had been taking the medication since approximately September 1985 and in the past had to lay off as a result of the illness and the effects of the medicine. On those occasions, Claimant informed Duke of the circumstances and Duke gave Claimant permission to be off.

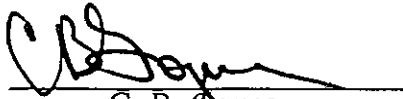
Rule 604 requires that employees must not be absent without proper authority. Substantial evidence demonstrates that Claimant was absent on July 16, 1986 without receiving permission to be off and hence, a violation of the Rule has been shown. However, a ten day suspension was excessive in this case. Claimant made an attempt to contact the appropriate Carrier officers to receive authority under Rule 604. Those officials made no effort at the time the call came from Claimant's girlfriend or thereafter to ascertain the reasons for the call. Considering that Claimant has informed Duke in the past of the effects of his illness, under the circumstances, more of an effort by the Carrier's officers was required. Nevertheless, the responsibility for obtaining permission under Rule 604 lies with Claimant. Balancing the above requires us to conclude that a five day rather than a ten day suspension was appropriate.

AWARD:

Claim sustained in accordance with opinion. The ten day suspension shall be

reduced to five days and Claimant shall be compensated accordingly.


Edwin H. Benn, Chairman
and Neutral Member


C. B. Coyne
Carrier Member


S. A. Hammons, Jr.
Organization Member

Houston, Texas
October 23, 1987