

PUBLIC LAW BOARD NO. 3836

BROTHERHOOD OF MAINTENANCE
DAY EMPLOYEES

-and-

SOUTHERN PACIFIC TRANSPORTATION
COMPANY (WESTERN LINE)

CASE NO. 9: Appeal of Truck Driver-Crane Operator
J.M. Smith, SSA 034-40-2352-8, from
discipline by suspension from the ser-
vice for "15 days, commencing March 6,
1986 through and including March 20,
1986."

BACKGROUND:

A Hearing was conducted on January 30, 1986 in connection with Smith allegedly having been absent without proper authority on October 28, and December 10, 1985 - January 20 and 21, 1986, violation of Rule 604, "Employees must report for duty at the designated time and place."

On March 3, 1986 Smith was given written notification that the evidence adduced at the January 30, 1986 Hearing established Smith's responsibility for having been absent without proper authority on October 28 and December 10, 1985 and January 20 and 21, 1986 and; accordingly, he would be suspended from service for 15 days commencing March 6, 1986 through and including March 20, 1986.

DISCUSSION AND FINDINGS:

David Franklin Holleman, Roadmaster, Dunsmuir, California,
appeared for SOPTC; a summary of Holleman's testimony follows:

Holleman stated that the reason for the SOPTC's action against Smith was Smith's failure on the four (4) dates specified to report as scheduled, or to notify the Foreman that he would not do so. Holleman further testified that prior to October 28, 1985 he had on several occasions discussed with Smith his need to report on time or "at least call me before working time." (TR 4)

Commencing with the October 28, 1985 failure to call or report, Holleman gave Smith written notice of his unauthorized absences on December 12, 1985; January 20, 1986 and January 21, 1986. (Exhibits A-B-C & D)

Holleman described Smith as a "competent worker" who, except for the dates with which we are concerned, did not absent himself from his assignment with Gang XG-64. (TR 7) However, Smith had requested Holleman's permission for early quits "four or five times during the period he had worked on different gangs around here." (TR 7)

Asked by Douglas, BMW, concerning the normal procedure that "a man has to take when he wishes to be absent," Holleman replied, "I require the people that work for me just call me and let me know if they are going to be late, or if they need time off - and most of the time I will allow it if they have problems." "...As long as they will communicate with me, I can work with them." (TR 8) (Arbitrator's underlining.)

J.M. Smith testified on his own behalf, a summary of that testimony follows:

Smith gave as the reason for his unauthorized absence on the

dates involved, "I have allot of family problems" which seem to get worse the further away from home he gets. "My wife has a bad problem handling the kids sometimes." "Then I don't know what to do, stay home to help out or what." (TR 8)

There is nothing in Smith's testimony, one way or the other, as to whether Smith made any attempt to reach Holleman by telephone, whether Smith had a telephone at his residence or, whether a telephone - private or public - was available for his use in calling either Holleman or the Foreman.

In view of Holleman's testimony, "As long as they call I can work with them," it would be interesting to have known why Smith did not call Holleman or the Foreman.

Holleman described Smith as a "competent worker" who, except for the dates involved in this proceeding, did not absent himself from his assignment. (TR 7) Further, Smith does not have a "disciplinary record." Nevertheless, he has been "counseled" on various occasions (prior to the incidents with which we are concerned), for having been absent without authority on April 13, 1981 (5 years ago), on 5 occasions in 1984, May 29 - July 4, 5, 16 and 17.

Clearly Smith received a "Fair and Impartial Hearing" thus, SOPTC complied with Rule 45.

It is also clear that there was "Substantial Evidence" that Smith was absent without permission on the dates cited in the charge. Smith admitted he was.

Was the discipline "Excessive"?

Smith was suspended for 15 days "commencing March 6, 1986 through and including March 20, 1986." Apparently, Smith would have been scheduled to work March 6th and 7th (Thursday and Friday); March 10th through the 14th (Monday through Friday); and, Monday, March 17th through Thursday, March 20th, which is a total of eleven (11) working days. Thus, Smith's total wage loss for the period of his suspension was eleven (11) days.

While I probably would not have made the same decision, under the particular circumstances cited in Smith's case, and in the absence of any indication of animus toward Smith in the record, this Board does not regard the discipline meted out to Smith as "Excessive."


SOPTC is entitled to have all employees report for work as scheduled or, at a very minimum, give SOPTC adequate advance notice that they will not, and the reason therefore.

Smith's disciplinary file as well as Holleman's unrefuted testimony constitutes "Substantial Evidence" of SOPTC's repeated efforts to impress this fact upon Smith.

If Smith has domestic problems, that is unfortunate, but, he must not permit his private life to interfere with his obligations to his employer - SOPTC.

AWARD: Appeal denied.

IT IS SO ORDERED:


John J. Gagerin
Chairman & Neutral Member

7/30/86