

PUBLIC LAW BOARD NO. 4228

PARTIES	SOUTHERN PACIFIC TRANSPORTATION CO.)	
	(WESTERN LINES))	
TO	AND	AWARD NO. 4
		CASE NO. 3
DISPUTE	UNITED TRANSPORTATION UNION)	
	(SWITCHMEN))	

STATEMENT OF CLAIM:

Claim is made in behalf of Switchman T. L. Sanders for reinstatement to service with full seniority rights unimpaired, loss of earnings commencing November 9, 1984 and continuing until he is returned to service; also, for holiday pay and vacation credits, Port Costa Yard.

HISTORY OF DISPUTE:

Claimant entered the Carrier's service as a switchman on June 15, 1973.

On December 3, 1983 Claimant was injured in an automobile accident as a result of which he was convicted on July 23, 1984 of driving under the influence of alcohol and causing injury. On September 10, 1984 Claimant was sentenced to two years for the offense.

Apparently in accordance with the advice of his Trainmaster, Claimant requested a leave of absence for personal business to extend from September 10, 1984 to September 9, 1985. However, Carrier never granted the request.

On September 14, 1984 Claimant laid off sick and never returned to duty.

Claimant was incarcerated as of October 13, 1984. By letter of October 16, 1984 the Carrier notified Claimant to appear for a formal

investigation concerning his absence from work. The investigation was held on October 25, 1984. By letter of November 9, 1984 the Carrier notified Claimant that evidence adduced at the investigation established his responsibility for laying off sick on September 14, 1984 and being absent from his employment since that date without proper authority. The letter stated Claimant's conduct violated Rule 810. The letter also stated that Claimant was dismissed from the Carrier's service.

The Organization grieved the discipline. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and it is before this Board for determination.

PARTIES' POSITIONS:

The Carrier maintains that the evidentiary record in this case supports its finding that Claimant violated Rule 810 and that under the circumstances of this case dismissal was appropriate.

The Carrier urges that it is not required by agreement, law or practice to grant a leave of absence to an employee who is going to be incarcerated and that its denial of Claimant's request for such leave was proper. The Carrier emphasizes that Claimant laid off sick when he knew he was going to be incarcerated. In the final analysis, argues the Carrier, Claimant was absent from duty without proper authority.

With respect to the measure of discipline, the Carrier emphasizes this is the second time Claimant has violated Rule 810 by being absent from work due to incarceration. In the previous instance the Carrier

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reinstated Claimant and permitted him to progress an appeal for time lost which was denied by Public Law Board No. 3576 in Award No. 34 rendered by the same panel hearing the instant case. The Carrier urges that inasmuch as Claimant has not reformed his conduct, dismissal was appropriate.

The Organization maintains that Claimant's incarceration and subsequent absenteeism was the result of psychological problems and alcohol dependence which should be handled as a medical matter. The Organization emphasizes that Claimant participated in an alcohol rehabilitation program while incarcerated and that Claimant has not used alcohol since his release approximately eighteen months ago. Additionally, argues the Organization, Claimant has undergone radical surgery for bowel cancer and his efforts to overcome his health problems demonstrate a serious attitude. The Organization urges that, accordingly, Claimant should be given another opportunity to prove his worth as an employee.

FINDINGS:

The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act, as amended, 45 U.S.C. §§151, et seq. The Board also finds that it has jurisdiction to decide the dispute in this case. The Board further finds that the parties to the dispute, including Claimant, were given due notice of the hearing in this case.

We believe the evidentiary record in this case amply supports the conclusion that Claimant violated Rule 810. Claimant was incarcerated

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and thus could not report to work. Claimant's request for a leave of absence was denied, and we believe the Carrier was under no obligation to grant that request. Accordingly, Claimant was absent from work without proper authority.

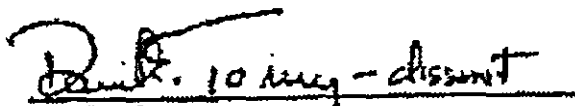
However, we agree with the Organization that under the circumstances of this case the discipline of dismissal is too harsh. While the violation of Rule 810 was Claimant's second offense under virtually identical circumstances; it appears that Claimant's most recent incarceration has had a positive effect upon him. He has not used alcohol since his release. Moreover, Claimant participated in an alcohol rehabilitation program while incarcerated.

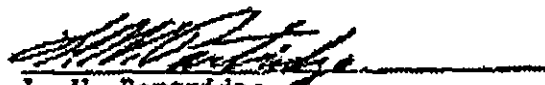
We are persuaded that Claimant should be reinstated and given one last chance to prove himself worthy of employment with the Carrier. However, we also believe that Claimant needs a structured program relating to alcohol abuse. Accordingly, we will make his reinstatement conditioned upon his participation in the Carrier's alcohol rehabilitation program.

AWARD

Claim sustained to the extent that Claimant is reinstated upon the condition that he participates in and successfully completes the Carrier's alcohol rehabilitation program. Claim denied in all other respects.


William E. Fredenberger, Jr.
Chairman and Neutral Member


D. E. Torrey
Carrier Member


L. W. Partridge
Employee Member

DATED: