

Public Law Board No. 4747

Claimant - C. L. Amos
Award No. 6

Case No. 6

PARTIES	Brotherhood of Maintenance of Way Employees
TO	and
DISPUTE	Union Pacific Railroad

STATEMENT
OF CLARK

The 60-day suspension assessed Laborer C L. Amos for alleged violation of various company rules as indicated in Mr. D. C. Jones' letter of October 1, 1990 is arbitrary, capricious and unwarranted.

Provided the sustaining of charges was correct, which it was not, the discipline assessed was excessive.

The claimant's record shall be cleared of the discipline referred to in Part (1) and he shall be compensated for all time lost.

FINDINGS

Upon reviewing the record, as submitted, the Board finds that the Parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Public Law Board is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

On Friday, August 10, 1990, the Claimant was working as an Extra Gang Laborer on Gang 9079. He was scheduled to work from 9:00 a.m. until 6:00 p.m.. Until sometime after 5:00 p.m. that

day it appeared the Gang would be released from work at the normal quitting time. However, as the end of the shift approached, the workers were told they would have to work overtime. This was not unusual.

Near the time the Assistant Foreman returned to the Gang to announce they would have to stay and work overtime, the Claimant had begun walking toward his car. He said he was tired and had no desire to wait around. It is not clear whether the Claimant was leaving in response to the notice that the Gang would have to work overtime or whether he had predetermined he was going to leave at the normal quitting time. Regardless, he walked up the road toward Motanic, Oregon. A half-mile from the work site, he was picked up by the Foreman, Mr. D. C. Peterson. According to the Foreman's testimony, the Claimant indicated he was heading for his car which was parked at Kamela, Oregon because he didn't want to work overtime and he had things he needed to be doing at home. The Grievant denies making those statements and insists he was attempting to locate someone with authority so he could be released for the day. At any rate, once the Foreman picked him up, he was taken to the Track Supervisor, Mr. S. J. White. Mr. White discussed with him the seriousness of leaving work without seeking permission. The Claimant allegedly recognized the significance of what he had done and expressed his understanding of the matter to the Supervisor. Mr. White told the Claimant he was in violation of Rule 48(1) after which the Claimant returned to the work site with the Foreman and rejoined the Gang which was finishing up their work.

The Claimant worked the following two work days, Monday and Tuesday, August 13 and 14. At some point on August 14, Mr. White advised the Claimant that he was being removed from service for leaving work without permission on August 10, 1990. Following this incident, the Union, on behalf of Mr. Amos, requested an investigation. On September 5, 1990, the Claimant received the following notice of investigation:

September 5, 1990

NOTICE OF FORMAL INVESTIGATION

Mr. C. L. Amos
SSN: 540-34-4463
Rt. 4 Box 4131 A
Herminston, (sic) Oregon 97838

Dear Sir:

At approximately 6:00 p.m. on August 10, 1990, you allegedly walked off from the job while working at Motanic, Oregon indicating a possible violation of Rule 48(L) of the Agreement between the Union Pacific Railroad and the BMWE.

You are therefore ordered to appear for hearing to determine your responsibility in this incident. This hearing has been scheduled for 8:00 A.M. on Tuesday, September 11, 1990 in the Union Pacific Depot, 1150 Jefferson Street at LaGrande, Oregon.

The hearing will be conducted in conformity with Rule 48 of the Agreement between the Company and the Brotherhood of Maintenance of Way Employees and you are entitled to representation as provided in that rule.

You may provide such witnesses as you desire at your own expense.

Sincerely,

B. A. Moser
Maintenance Engineer - Track

As a result of evidence produced at hearing, the Carrier believed the Claimant had attempted to absent himself without authority on August 10, 1990. He was suspended for a period of sixty (60) days.

The only other disciplinary action which appears on the Claimant's record is a thirty (30) day suspension which occurred March 3, 1989. Other than that the Claimant appears to have a clean employment record during his total tenure with the Carrier.

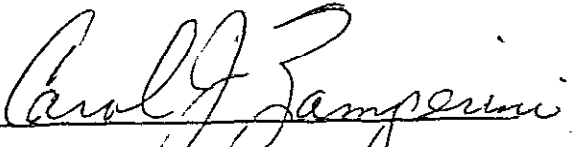
There is little doubt that the Claimant had intended to walk off the job at the end of his normal shift on the day in question. He headed toward his car and indicated his intention to go home to the Foreman who picked him up along the road and subsequently to the Supervisor who interviewed him. However, it is also obvious the Claimant gave little thought to the seriousness of his actions. He, like the other members of his gang, had put in a great many overtime hours. It had been a hot day, and according to the Claimant, his wife was not happy with the number of hours he was away from home. It is apparent this put pressure on the Employee. Once he was cautioned about his behavior, he willingly returned to the work site and following his weekend off, he came to work the next two work days. At no time was he recalcitrant. It hardly seems necessary to have suspended him for such a lengthy period of time. Surely a less intensive penalty would have served to modify the Claimant's behavior, especially, since there is no evidence he was guilty of ignoring a direct order. Besides, the Carrier was especially

slow in assessing the penalty. The Supervisor failed to even mention the matter was pending further investigation. If, as the Supervisor testified, the practice had been to suspend employees who committed the identical rule infraction, the Supervisor should have advised the Claimant of at least this possibility on the day of the incident. At any rate, the Carrier had two days over the weekend to determine the appropriate discipline, but failed to take action until the following Tuesday. In the meantime, the Claimant worked two additional work days before he was told he was being suspended.

While walking off the job without proper authority is a serious infraction, the premise of progressive discipline dictates that a lesser penalty be issued for a first such offense. As mentioned above, this is especially true considering the fact the Claimant made no attempt to disobey his Supervisors once told to return to work. The Neutral also considers the circumstances surrounding the situation on the day in question to be a mitigating factor.

AWARD

The Impartial Arbitrator has taken into account not only the Employee's employment record, but the manner in which the Claimant was issued the discipline, as well as, the concept of progressive discipline and has determined the penalty issued the Claimant to be too severe; the Sixty (60) day suspension is to be reduced to a ten (10) day suspension. The Claimant is to be reimbursed for any loss of wages or benefits in excess of this amount.


Carol J. Zamperini
Impartial Neutral

Submitted:

February 23, 1990
Denver, Colorado