

PUBLIC LAW BOARD NO. 1997

Parties: Brotherhood of Maintenance of Way Employees
and
Union Pacific Railroad Company

Statement of Claim: "1. Claim that Carrier violated the Agreement when on January 19, 1977 they dismissed B & B Carpenter Helper P. G. Boucher, said dismissal being arbitrary, excessive and without good and sufficient cause.

2. That P. G. Boucher be reinstated to his former position with seniority and all other rights unimpaired and compensated for all loss of earnings subsequent to January 19, 1977 account the Carrier's improper action."

Discussion: The Claimant had a seniority date of January 28, 1976 as a B & B Helper. On December 3, 1976, he was furloughed as a result of a reduction in force. On December 20, 1976, the Carrier bulletined several B & B Helper jobs on Gang 2429 which was assigned to the Wyoming Division and headquartered in outfit cars.

On January 11, 1977, the Claimant, together with furloughed employees Osterling and Warner were recalled and assigned to this B & B Gang 2429.

The Claimant and his two colleagues were directed to report on January 17, 1977 to Hermosa, Wyoming. In early January 1977 Gang 2429 was assigned to Bosler, Wyoming. It completed its work there on Friday, January 14, 1977, and the outfit cars were supposed to be

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shipped and to be available for the Claimant and his fellow workers by January 17, 1977. When the Claimant and crew arrived at Hermosa, the outfit cars had not arrived. The Carrier authorized the Claimant and crew to be quartered at a motel and receive meals for the night of January 17, 1977 and they would be reimbursed for their expenses at the end of the month.

The outfit cars arrived at 10:00 P.M. on January 17, 1977. The Claimant and crew examined the cars the morning of January 18th and contended they were not suitable for habitation in that they were not hooked up for electricity, had no heat, water, proper showers, closet space, etc.

The Claimant and his fellow workers contacted their foreman, who after a discussion with his supervisor, secured a hot plate for the employees on which they could prepare their food. The employees concluded that this was not adequate, and they were not receiving satisfactory lodging facilities as provided for in Rule 51 of the Agreement. The Claimant and his fellow workers discussed the situation during their lunch period and called their Union Representative, Mr. Ebbeka, and told him they had decided to go home because of the lack of suitable quarters.

The Union Representative did not counsel them one way or the other, but informed them that he would notify their foreman that they had returned home. The Claimant and crew also informed Mr. Adams, who acted as foreman in the absence of the foreman, the latter having gone to Bosler to secure fence material for the work to be done at Hermosa.

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At 12:15 P.M. on January 18, 1977, the Claimant and the two other employees left the work site and returned home. The next day, Wednesday, January 19th, the three employees sent telegrams to their supervisors and their union representative notifying them that in view of the fact that the outfit cars were not suitable to live in, they had returned home after they had notified their local union representative.

The Carrier notified the three workers on January 19, 1977, that since they had absented themselves from the balance of their assignment without prior permission, in violation of Rule 702, they had been removed from service as of January 18, 1977.

After a duly noticed hearing on February 4, 1977, the three employees were notified on February 9, 1977, that their dismissals were sustained on the basis of the evidence adduced at the February 4, 1977 Investigation.

Messrs. Osterling and Warner petitioned the Carrier to be restored to their positions on a leniency basis and the Carrier restored them to their job 30 days after their dismissal. The Claimant made no such leniency request and filed the instant claim on February 17, 1977.

Carrier's Position

The Carrier contended that the Claimant voluntarily, and without antecedent permission, left his assignment on January 18, 1977, after working four hours thereon. Such conduct was a clear breach of Rule 702. The Claimant admitted at the

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Investigation that he had no permission to leave his assignment, and leaving word with another employee, is not the equivalent, of complying with Rule 702.

The Carrier stated that the Claimant stressed the so-called extenuating circumstances as a defense for his unexcused absence from his assignment. However, by the Claimant and his fellow workers refusing to remain at the work site and discussing the situation with their foreman and the supervisor, they denied the Carrier an opportunity to initiate action to correct the alleged unsuitable living conditions. The Carrier added that it is the duty of the gang employees to make their outfit cars suitable for habitation. They did not remain long enough at the work site to work out a solution of the existing problem. The Claimant voluntarily and freely disregarded the relevant rules and chose to absent himself from his assignment without permission, and the Carrier had just cause to dismiss him for his clear and unequivocal breach of the Agreement rules.

Organization's Position

The Organization stressed that the Carrier has a contractual obligation to provide suitable quarters for employees working in the field. The Carrier was aware that this Gang would start to work at Hermosa on January 17, 1977, and it had the responsibility to make sure that the outfit cars arrived there in sufficient time so that they could be properly hooked up to the necessary connections in order to be habitable. The Organization stressed that it was very little aid to the Claimant and his two fellow employees to be informed

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that they could go to a motel for lodging and meals and that they would be reimbursed therefor at the end of the month. These employees had been recalled from furlough on January 10, 1977, after being on furlough since December 3, 1976, and did not have sufficient funds to live in a motel or buy food and then wait for the Carrier to reimburse them at some subsequent date. The Organization stated that it was wrong for the Carrier to remove the Claimant from service when it was initially in error by not providing the Claimant and crew with suitable accommodations when they reported for duty on January 17, 1977. The Carrier's failure to meet their obligations to their employees gave these employees no alternative but to return home since they had no other means of securing adequate subsistence or lodging.

Findings: The Board, upon the whole record and all the evidence, finds the employee and Carrier are Employee and Carrier within the meaning of the Railway Labor Act; that the Board has jurisdiction over the dispute and that the parties to the dispute were given due notice of the hearing thereon.

The Board finds that neither party to the dispute is completely without fault in this case, but the heavier burden of culpability must fall on the Claimant. The record discloses that the Claimant acted precipitiously and in an impetuous manner, without affording the Carrier a reasonable opportunity to correct an admittedly undesirable condition.

The record shows that the outfit cars arrived late in the evening of January 17, 1977 at Hermosa, when it should

have been there earlier that day to accommodate the Gang who started to work at this location that morning. Since this assignment had been bulletined in advance, the Carrier had the responsibility to assure suitable accommodations were available for the men it was expecting to work there in mid-winter in an area noted for the severity of its winters. Moreover, it knew that it had recalled men who had been on furlough for approximately six weeks and therefore would not be overly endowed with liquid funds, and it was not much aid to these recently furloughed employees to tell them to go live in a motel and take their meals and that they would be reimbursed at the end of the month. Such Carrier action shows an insensitivity to the realities of economic conditions under which furloughed employees have to live and function.

Having made these observations, nevertheless, we also find that the Claimant did not responsibly meet the important obligations of his job. He had only been on the job one day, when he decided to leave after lunch of the second day, without affording Carrier supervision a reasonable opportunity to correct the situation, or grant the Claimant meaningful relief. The Claimant simply assumed the Carrier would not correct the situation promptly, and proceeded to walk off his job. This not permissible conduct. It is a serious breach of duty, and if permitted to go unchecked, could subvert the employer-employee relationship.

On the basis of this total record, in which no party is completely exculpated, we find that the Claimant has already

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been sufficiently punished for his irresponsible conduct, and therefore he is to be restored to his job, seniority unimpaired, and he should receive 30 days back pay, as a forceful reminder to the Carrier that it should be more sensitive to the compelling problems of its work force operating in the field, and it should be more responsive to its contractual obligations to provide suitable living quarters to its field work force working and living under severe and adverse conditions.

Award: Grievance disposed of in accordance with the Findings.

Order: The Carrier is directed to comply with the Award, on or before March 6, 1978.

Jacob Seidenberg
Jacob Seidenberg, Chairman and Neutral Member of Board

E. R. Myers
E. R. Myers, Carrier Member

S. E. Fleming
S. E. Fleming, Employee Member

February 5, 1978