

Award No. 6

Case No. 7

Docket No. MW-77-102

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company  
-Texas and Louisiana Lines-

Statement of Claim 1. Carrier violated the effective Agreement when on June 8, 1977, it unjustly dismissed Dallas Seniority District Track Laborer Mr. Binus Jackson, Jr.

2. Claimant Binus Jackson, Jr. be reinstated to his former position, with pay for all time lost and with seniority, vacation and all other rights unimpaired.

Findings The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated May 22, 1978, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Laborer was an Extra Gang Laborer on Extra Gang No. 427, Dallas Roadmaster's District and was absent from his position without proper authority on June 7, 1977. He was dismissed from service June 8, 1977 for having been in violation of Rules M810 and M811. A certified letter sent to Claimant was returned marked "Moved no forwarding address". A new letter was sent under date of June 24, 1977 to Claimant's new address which Carrier had ascertained after investigation.

Claimant requested a hearing on his dismissal which was granted. The investigation, after several postponements, was held on July 27, 1977 and, from the evidence adduced thereat, Claimant Laborer was adjudged to have been guilty as charged. He was advised by letter that the dismissal was sustained.

Rule M810 and M811 read as follows:

"M810. Employees must report for duty at the prescribed time and place, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority...."

"811. Employees must not absent themselves from their places, substitute others, or exchange duties without proper authority."

The Board finds that Claimant was accorded a fair hearing.

There was sufficient evidence adduced thereat to support the conclusions reached by Carrier. Claimant placed strong reliance on the fact that Claimant was incarcerated and therefore not in a position to report for or work on his position. It has been long held that incarceration is generally the result of a voluntary cause and therefore does not provide justifiable reason for an unavoidable absence.

As was pointed out in NRAB's Second Division Award No. 6606:

"Does Claimant's incarceration constitute unavoidable absence from work on account of sickness or any other good cause? This Board has previously held that confinement in jail does not constitute unavoidable absence for good cause. (Award 4689, Second Division, Daly, April 28, 1965)"

.....

"Claimant has placed himself in a position of being absent from service, but not unavoidably. He should be cognizant of and is liable for the consequences of violating the law. His conscious violation of the law does not constitute an unavoidable absence for good cause; violations of the law are presumed avoidable."

Also, Third Division Award 19568, (Blackwell), states in part:

"....being held in jail was, of course, the consequence of his own personal conduct and cannot be regarded as justifiable reason for not protecting his assignment."

Nor was there, as pointed out in Third Division Award 18816 (Hayes):

"....Where there is an apparently violation of Rule 404 by a Claimant who is incarcerated and unable to notify Carrier of his inability to report to work, in order to be relieved of the consequences of such violation Claimant must have a plausible explanation of events

that might lead a reasonable man to deduce that incarceration was not primarily the result of Claimant's own wrongdoing. No such explanation was ever furnished the Carrier...."

any plausible explanation here offered.

As to the discipline assessed, we find, in view of Claimant's record of a propensity to not protect his position, particularly when viewed in light of the fact that he had been previously advised that any further violation could result in his dismissal from service, that it is reasonable. This Claim will be denied.

Award      Claim denied.

M. A. Christie  
M. A. Christie, Employee Member

R. W. Hickman  
R. W. Hickman, Carrier Member

Arthur T. Van Wart  
Arthur T. Van Wart, Chairman  
and Neutral Member