

PUBLIC LAW BOARD NO. 2439

Award No. 70
Case No. 70

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company (Western Lines)

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the current agreement when, in letter dated August 20, 1982, it advised Track Laborer Jose G. Gonzalez to the effect that after a review of the evidence adduced at the hearing held on August 11, 1982, they were convinced that the evidence adduced therein clearly established claimant's responsibility in that he was absent without proper authority, and for reasons thereof, the termination of his seniority and employment with Carrier by letter dated June 30, 1982, would remain in effect, said action by Carrier being excessive, unduly harsh and in abuse of discretion.
2. That claimant be reinstated to his rightful position on Extra Gang No. 2 with seniority and all other rights restored unimpaired, and compensated for all time lost therefrom."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant herein had been employed by Carrier on January 28, 1971. On June 15, 1982, while on route to his assignment, claimant experienced automobile trouble. He managed to report to work nevertheless on that day and, upon the completion of his shift, was permitted to end his assignment at a location where his car was in order to secure whatever repairs were necessary. While attempting to have his car repaired, claimant became aware that he was short of funds and called home, asking that additional money be brought to him. On making the telephone call, he was made aware that his wife was ill and that it was a serious problem. The following day claimant addressed a letter to the Regional Engineer requesting a leave of absence for a period of from three to six months because of a personal emergency. By letter dated June 22, 1982, the Regional Engineer wrote to

claimant denying the request for a three to six months leave and stated, however, that a request for a thirty-day leave of absence would be considered, and asking claimant to advise Carrier if he was interested in such a leave. This letter was received by claimant (certified) on June 30, 1982. On July 1, 1982, claimant addressed a letter to the Regional Engineer and indicated in that letter:

"I received your letter dated 6-22-82. I would greatly appreciate it if you grant me at least a thirty-day leave of absence of which you mentioned to be possible.

As I mentioned in my previous letter, this is due to a personal emergency and I do not wish to lose my job nor my seniority.

Please inform me of your decision."

Subsequently by letter dated June 30, 1982, the Regional Engineer addressed a letter to claimant indicating that claimant was terminated for being absent without authority from June 16, 1982, and thereafter. Claimant reported for work on July 13, 1982, not having received the last communication from Carrier. He was denied the right to assume his assigned position and was informed that he had been terminated. Following an investigation held on August 11, 1982, Carrier reaffirmed its decision to terminate him for his absences from June 16 through June 30, 1982.

Carrier argues that there was substantial evidence that claimant left his employment without authority and did not obtain permission for a leave of absence. His unilateral action in taking a leave of absence was unacceptable, particularly since there was no evidence to substantiate that an emergency existed. Furthermore, Carrier notes that at the hearing, later, claimant acknowledged that he was absent and did not request a leave of absence until after he had left the area where he was employed. Carrier notes that it is significant that employees obtain authority for leave of absence before taking a leave and not the reverse situation. Carrier has no way of determining its work force if employees can unilaterally leave work, assuming that they have been granted leaves when that action has never been taken. In addition, Carrier argues that claimant could have contacted his supervisor or the District Manager concerning the leave, even after having left the area, but did not do so.

Petitioner, noting that claimant had a spotless Personnel record, argues that claimant simply drew a wrong conclusion from the correspondence which had taken place. Claimant assumed that the Regional Engineer's letter, which was received by claimant on June 30, granted him authority to be absent for the thirty-day period and this has been confirmed, according to Petitioner, by the fact that there was no mention of the time period commencing July 1 with respect to claimant's alleged infraction. In addition, the Organization insists that termination, under all the circumstances in this matter, was clearly excessive, and an eleven-day absence with a misunderstanding which was explicit in this case was obviously improper and harsh, according to the Organization.

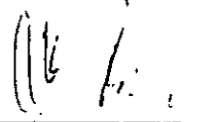
This dispute obviously contains rather unusual circumstances. It is clear that claimant did not, indeed, have an approved leave of absence for the period of time which he took off from his job. Regardless of the nature of the emergency (or alleged emergency) involved, claimant was clearly responsible for securing permission to be off before leaving his work. In this instance he did not do so. Therefore, his culpability for the absence is clear and unambiguous. However, it also must be noted that Carrier's actions in this case are not beyond criticism. First, the letter which Carrier sent to claimant dated June 22 could indeed have been construed to have granted claimant a thirty-day leave of absence. Furthermore, the penalty imposed in this instance on its face appears to be harsh and an abuse of discretion. Based on the reasoning expressed above, the Board concludes that claim should be reinstated to his former position with all rights unimpaired but, due to his contributing culpability in the particular situation, he shall not be paid for time lost.

AWARD

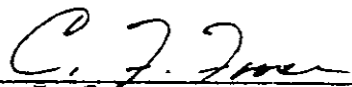
Claim sustained in part; claimant will be returned to his former position with all rights unimpaired but without compensation for time lost.

ORDER

Carrier will comply with the award herein within thirty (30) days from the date hereof.


I. M. Lieberman, Neutral-Chairman


L. C. Scherling, Carrier Member


C. F. Foose, Employee Member

San Francisco, CA
March 27, 1984