PUBLIC LAW BOARD NO. 2710 AWARD NO. 3

PARTIES TO DISPUTE ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES vs. THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Mr. David Duran that his dismissal from service was capricious and unjust, and that he be reinstated to his former position with all seniority, vacation and other benefits unimpaired. Duran was dismissed effective September 19, 1979.

OPINION OF THE BOARD

The record in this dispute discloses that Claimant acknowledged receipt of a notice of investigation on August 29, 1979. Said notice ordered Claimant to attend an investigation on August 31, 1979, for the purpose of ascertaining the facts and determining his responsibility in connection with his allegedly being absent from his assignment as laborer on the Broomfield Section without proper authority on August 24 and August 27, 1979. It further directed Claimant to arrange for representative and/or witnesses desired. On August 31, 1979, Claimant appeared at the investigation and advised the Hearing Officer that he (Claimant) desired representation; had attempted to obtain two (2) union officers to represent him at this investigation; that the two (2) union officers he had attempted to represent him were either on vacation or were out of town; and that he was not ready to proceed. The Hearing Officer took the position that Claimant had received notice of hearing dated August 28, 1979, and proceeded with the hearing.

It appears to this Board that although the Rules do not specify a certain number of days between receiving the notice of investigation and the holding of an investigation, that the Rule contemplates a "reasonable time". This Board finds that under the provisions of Rule 26 of the Agreement, less than three (3) days actual notice does not constitute a reasonable time to obtain representation and prepare for an investigation, especially where the consequences can be a dismissal. It is true that Claimant did not request a postponement, but a postponement should have been ordered by those Carrier Members conducting the investigation.

Although this Board does not condone the inadequate notice and denial of the right of representation at the investigation, the past record of this Claimant conclusively indicates that it would be a futile gesture to remand this case to the property for a new hearing. Therefore, this Claim will be denied.

AWARD: Claim denied.

Signed at Denver, Colorado on this 10th day of March, 1981.

GENE T. RITTER, Chairman

D. M. TISDALE,
Carrier Member

S. E. FLEMING,
Employee Member