

PUBLIC LAW BOARD NO. 3271

Award No. 1
Case No. 1
Docket No. 700-104

Parties Brotherhood of Maintenance of Way Employees

to and ...

Dispute Galveston Wharves

Statement

of Claim: Claim of Mr. Thomas W. Swan for reinstatement to service with the Carrier and pay for all time lost with all 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 September 14, 1982, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, an auto mechanic, who first entered Carrier's employment as a Laborer on May 3, 1965, was in Carrier's Construction and Maintenance Department since June 19, 1973.

He was notified, on July 6, 1981, to attend a formal investigation on the charge:

"...that you were absent from your workplace without permission on two separate occasions, on Wednesday, July 1, 1981 from 1:00 p.m. to 5:00 p.m. and again on Thursday, July 2, 1981 at 8:00 a.m."

Following the investigation concluded July 13, 1981, at which Claimant was represented by his personal attorney, Claimant was advised that:

"...you are guilty of the charges made against you. We have taken into consideration that you have been disciplined before on January 3, 1979 for being absent without permission and again on January 30, 1981 for sleeping on the job. It is my decision that your employment is terminated as of this date July 20, 1981."

This Board's function has authoritatively been deemed to be that of an appellate body which determines from the record presented it whether an

employee who has been disciplined by his employer had received the due process to which entitled under the discipline rule applicable to his craft or class, whether there had been a sufficiency of evidence adduced to properly support the conclusions reached by Carrier and if so whether the degree of discipline assessed the employee viewed in the light of the offense and Claimant's service record was unreasonable.

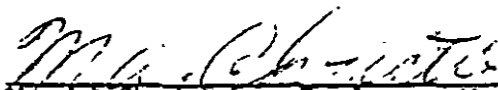
The Board finds that Claimant was accorded the due process to which entitled under Article 11 - Discipline and Grievances. He was properly charged, represented by his own attorney, faced his accusers, had witnesses and exercised his right of appeal. Claimant's representative agreed that the hearing had been conducted in a fair and impartial manner.

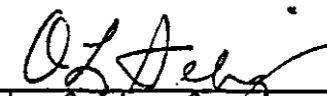
There was sufficient evidence adduced, including the admissions against interest by Claimant, to support Carrier's conclusions as to Claimant's guilt on the charge of absence without permission July 1 and 2, 1981.

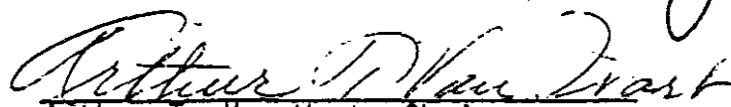
The Board finds circumstances which serve to mitigate the discipline assessed. Claimant will be conditionally reinstated to service as a Laborer with all rights otherwise unimpaired but without pay subject to the following: Claimant must first pass the necessary and appropriate return to service medical examinations; thereafter Claimant is to meet with his and Carrier's local representatives to review, to discuss and to understand his problem and, in particular, his wandering about or leaving the property without permission, as well as his obligation to his employer; and to further understand that he is being placed in a probationary status for a one year period and that if Claimant should violate such status it alone, if proven, will provide basis for dismissal. Probationary status does not eliminate Claimant's rights under Article 11. It will thereafter be up to Claimant to demonstrate that he desires to continue to work for Carrier.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


M. A. Christie, Employee Member


O. L. Selig, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member