

PUBLIC LAW BOARD NUMBER 3445

Award Number: 22

Case Number: 22

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM:

B&B Mechanic, Thomas Gladney, 608 Scarsdale Drive, Columbia, South Carolina 29203, was dismissed from service for allegedly failing to report to work on time and violation of Rule M and Rule GR-4. Employee request he be restored to service with seniority and vacation rights unimpaired.

FINDINGS:

As a result of a number of incidents that occurred on May 26, 1983, Claimant, a B&B mechanic assigned to Carrier's B&B Gang E-10, was charged with reporting late for work, conduct unbecoming an employee, and violation of Carrier's Operating Rules M and GR-4. A hearing was held in order to investigate the charges, and on the basis of the evidence adduced during the investigation, Carrier determined that Claimant was culpable as charged and

that he should be dismissed.

The Organization filed a claim protesting Carrier's actions and requesting that Claimant be restored to service with seniority and other rights unimpaired, and with back pay for all time lost. The claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Board for resolution.

The issue to be decided in this dispute is whether Claimant was dismissed for just cause; and if not, what should the remedy be.

The record shows that on the morning of May 26, 1983, B&B Gang E-10 was scheduled to go on duty at 7:00 AM. The record shows further that while Claimant's car was present at the work site when the rest of the crew arrived (at approximately 7:07 AM), Claimant did not report for work until approximately 7:25 AM. At that time, Claimant emerged from a point near the river carrying a fishing rod, which he placed in his car prior to reporting for work. The Organization argues that Claimant was "fishing" for a wrench that he had dropped in the river several months before. Even if this contention could be believed, it would in no way mitigate Claimant's culpability. There is no evidence that Claimant was instructed to search for the lost wrench while the other members of the gang performed their duties. It must therefore be

concluded that Claimant simply failed to report for duty on time.

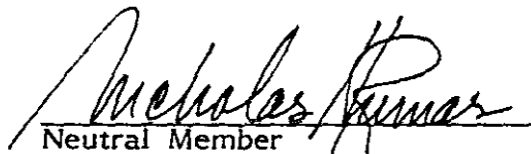
Regarding Claimant's alleged violation of Carrier's safety rules, testimony was given by Claimant's fellow employees to the effect that Claimant was moving a steel plate in such a way that his finger became caught under the plate when he set it down. When Claimant jerked his hand away, the plate fell towards two other employees who jumped away in order to avoid it. Handling a steel plate in such a manner is clearly a failure to perform assigned duties safely. A second incident involved the lifting of a steel span by means of a crane. The span was to be lifted by a cable that hooked to the span at each end. Claimant's fellow employees testified that after Claimant hooked his end of the span and the crane began to lift it, the hook placed by Claimant slipped off and swung toward another employee who was forced to duck to avoid being hit. The logical conclusion is that the hook would not have slipped if Claimant had set it properly. The third alleged violation of safety rules occurred when Claimant set his cigarettes and butane light on the dashboard of a Carrier truck. When the truck was later moved, the lighter fell down into one of the defroster vents, resulting in a safety hazard. The record shows the Claimant and his fellow employees had been instructed not to place such items on the dashboards of Carrier vehicles.

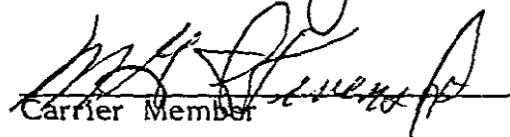
A review of the record as a whole shows that on May 26, 1983, Claimant

failed to report to work on time, and on three occasions failed to perform his assigned duties safely. The imposition of discipline was therefore warranted. The Organization argues that Claimant's work record prior to December 27, 1982 should be disregarded since his record prior to that date had been "cleared" by a previous claim. However, there is no evidence, other than the Organization's assertions, that Claimant's record was in fact "cleared" as claimed. It therefore must be held that consideration of Claimant's record for the purpose of setting discipline was proper. A review of that record shows that Claimant has been suspended twice and dismissed once since 1980. Because Claimant is apparently either unable or unwilling to properly perform his assigned duties, it cannot be held that his termination was overly harsh or in any other way improper. Accordingly, the claim must be denied.

AWARD:

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date:

Nov. 13, 1984