

PUBLIC LAW BOARD NUMBER 3445

Award Number: 36
Case Number: 36

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Laborer, S. D. Hill, 201 Sykes Avenue, Greensboro, NC, 27406, was dismissed from service on October 6, 1984 for alleged failure to properly flag and with resting in a prone position during working hours. Claim was handled on the property in accordance with Railway Labor Act and agreement provisions. Employees request reinstatement with back pay for all lost time and all other rights unimpaired.

FINDINGS

Claimant, at the time of the incident in question, was employed by Carrier as a track laborer. By letter dated September 21, 1984, Claimant was notified to attend an investigation concerning charges that he failed to properly perform his duties and was resting while on duty on September 11, 1984. An investigation was held on September 28, 1984. By letter dated October 5, 1984, Claimant was dismissed from service on the basis of his adjudged guilt concerning the charges.

The issue to be decided in this dispute is whether Claimant was dismissed for just cause under the Agreement.

The position of the Organization is that Claimant was wrongfully dismissed by Carrier.

Initially, the Organization contends that Claimant was not asleep while on duty. The organization admits that Claimant was in a reclined position, but claims that he was in that position on the advice of his doctor. The Organization further contends that Carrier failed to establish that Claimant was asleep or otherwise inattentive to his duties.

Carrier contends that Claimant failed to provide flag protection as instructed. Carrier cites the testimony of Assistant Track Supervisor Fox that he found Claimant in a reclined position with his eyes closed at a time when he was supposed to be flagging. Carrier further cites the testimony of track laborer Minar who corroborated Fox's account of the incident. Finally, Carrier cites Claimant's own testimony that he failed to properly perform the flagging duties assigned to him. Carrier maintains that the evidence as a whole establishes clearly that Claimant failed to properly flag, was not alert to his duties and performed in an overall unsafe manner.

After review of the record, the Board finds that the Claimant should be reinstated to employment, with seniority unimpaired, but with no pay for time lost.

It is not the purpose of this Board to rehear an investigation that Carrier held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

Carrier has sustained the charges against Claimant through substantial evidence. Claimant's own testimony indicates that he was assigned line flagging duties, that he was aware of proper procedure associated with line flagging and that he failed to follow that procedure. Testimony of other Carrier witnesses established that at very least Claimant was in an improper position to perform flagging functions. Claimant's failure to properly attend to his flagging duties constitutes a serious offense, jeopardizing the safety of both his fellow workers and Carrier's equipment. If Claimant felt unfit for duty because of medication he was taking, he had an affirmative duty to inform Carrier of that problem. Failure to have done so only further establishes Claimant's breach of duty.

Notwithstanding the above, we find that Claimant is entitled to reinstatement. However, in light of the seriousness of the offense, we do not find Claimant eligible for any pay for time lost. Additionally, Claimant should be made aware that any future violations of this type will constitute grounds for immediate dismissal.

AWARD

Claim disposed of per Findings herein.

Nicholas Kumar

Neutral Member

Amelia D.

Carrier Member

Dwight L. Ball

Organization Member

DATE: Oct. 1, 1987