

PUBLIC LAW BOARD NO. 3445

Award Number: 54

Case Number: 54

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claimant, A. W. Tatum, was charged with alleged failure to protect his assignment during the period from September 28, 1987 to October 12, 1987. Employee request reinstatement with all rights unimpaired, and pay for all lost time.

FINDINGS

Claimant entered the Carrier's service on September 27, 1973.

By letter dated October 12, 1987, Claimant was directed to attend an investigation on charges that he failed to protect his assignment from September 28 to October 12, 1987. That investigation was conducted on November 3, 1987. Claimant was dismissed by letter dated November 4, 1987, based on the evidence adduced in that investigation.

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

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Claimant was absent from work from September 15 to 24, 1987. On September 21, he was examined at a non-Carrier medical facility, diagnosed with a simple contusion to the left elbow and released to return to work. Claimant presented his return-to-work release to Track Supervisor M. D. Bankston on September 23. The Carrier conducted a return-to-work physical examination that same day, found nothing abnormal and approved Claimant's return. Claimant worked September 24 and 25. On September 27, 1987, Claimant advised Bankston he would not work the following day on account of a broken elbow. Bankston advised Claimant that he was medically approved for work, indicating that Claimant should report for duty. Claimant did not report on September 28, 1987, has not received permission to be off and has not worked since then.

Claimant has been disciplined five times during his service for failure to protect his assignment including reprimand and progressively severe suspensions.

The position of the Organization is that Claimant was unjustly dismissed because he was properly off work during the time in question on account of injury. The Organization maintains that Claimant was unable to work due to a bona fide physical disability which does not require written leave. The Organization argues that the Carrier has not met its burden of proof and that the discipline imposed is excessive.

The position of the Carrier is that Claimant was dismissed for just

cause having failed to protect his assignment from September 28 to October 12, 1987. The Carrier maintains that the evidence clearly proves Claimant did not work during the period in question and that he did not have a proper excuse or permission to be off work. Rather, the Carrier contends, Claimant was approved to return to duty, had in fact returned and subsequently failed to protect his assignment. The Carrier maintains that the discipline imposed was proper in light of Claimant's history of repeated poor attendance and the chaos on the work of the Carrier that would be brought about were employees permitted to work when the fancy strikes them.

After review of the entire record, the Board finds that Claimant was dismissed for just cause under the Agreement.

The Carrier has established by substantive credible evidence in the record that Claimant was not at work during the period September 28 to October 12, 1987 and that he did not have permission to be off work. Further, there is no adequate evidence that Claimant was physically unable to work. Indeed, he had been certified fit for duty in two separate physical examinations and had worked subsequent to them. The assertion that he was not able to work on account of a broken bone in the elbow is not supported by the record.

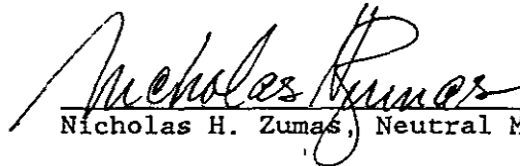
As to the discipline imposed, the Carrier correctly contends that chaos would ensue if employees did not report for work when they were regularly scheduled to do so and if they did not protect their assignments in a fashion so as to maintain the 24-hour operations of the railroad. Moreover,

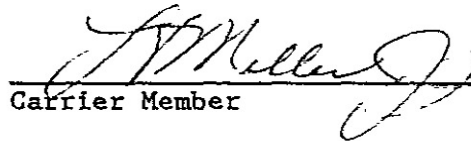
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Claimant's work record indicates a history of attendance problems about which he has been repeatedly counseled and progressively disciplined. Dismissal of Claimant was reasonable and neither arbitrary nor capricious.

AWARD

Claim denied.


Nicholas H. Zumas, Neutral Member


Carrier Member


Organization Member

Date: JUNE 12, 1989