

PUBLIC LAW BOARD NO. 3445

Award Number: 8
Case Number: 8

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Foreman Operator, P.H. Dewberry, P.O. Box 393, Villa Rica, Georgia, was dismissed from service for allegedly failing to protect his assignment. Employee request pay for all time lost with vacation and seniority rights unimpaired.

FINDINGS

By letter dated July 26, 1982, Claimant was informed that he was being charged with failure to properly protect his regular assignment as foreman/operator on July 21, 1982. A hearing was held in order to investigate the charges, and on the basis of the evidence adduced at the investigation, Carrier determined that Claimant in fact failed to protect his assignment as charged, and that he should be dismissed. The Organization filed a claim protesting Carrier's action and requesting that Claimant be reinstated with lost pay and with seniority and other rights unimpaired. Carrier denied the claim 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.

Carrier's regulations governing the protection of assignments state that an employee who has cause to be absent from an assignment must give advance notice of that absence to Carrier. The regulations state further that, except in certain circumstances, notification of absence can be accepted only by the employee's supervisor. The record contains a copy of those regulations that has been signed and acknowledged by Claimant; therefore, it must be assumed that Claimant understood the necessity of providing advance notice of his absence to Carrier.

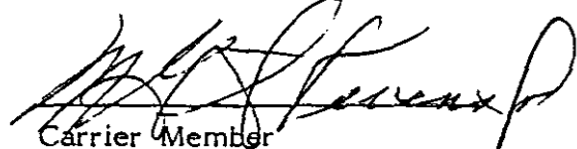
At the investigation, Claimant stated that he was absent from his regular assignment on July 21, 1982. Claimant testified further that on the morning of July 21, 1982, he awoke at 6:00 AM and then returned to bed when he realized he was not feeling well. Claimant also testified that he attempted to contact his supervisor "around worktime". However, the record shows that Claimant's supervisor was available to receive Claimant's call at Claimant's worktime of 7:00 AM on the date in question. Claimant eventually contacted his track supervisor, Mr. Don Hudson, "after 8:00 AM."

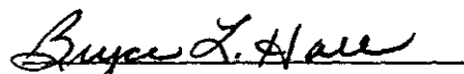
A review of the record as a whole shows that Carrier has presented clear and convincing evidence that Claimant failed to properly protect his assignment on July 21, 1981, in that he failed to notify his supervisor, in advance that he would be absent that day. However, it is the opinion of this Board that the penalty of dismissal was overly harsh under all the circumstances. Claimant's work record shows that prior to the present incident he had been disciplined only twice within a period of approximately five years. The penalty of dismissal should be reserved for those employees who clearly exhibit a continuous unwillingness or inability to properly perform their assigned duties. Claimant is not such an employee. However, his offense in the present case is a serious one; Carrier has the right to expect its employees to either report for work as assigned or notify their superiors in advance of their absence. Therefore, while Claimant shall be returned to his former position, he shall receive no back pay or compensation for any other lost benefits.

AWARD

Carrier shall reinstate Claimant to his former position immediately with seniority unimpaired but with no back pay.


Neutral Member


Carrier Member


Organization Member

DATE: Nov. 13, 1984