

PUBLIC LAW BOARD NO. 3558

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TO)
DISPUTE) SOUTHERN PACIFIC TRANSPORTATION COMPANY (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of Steel Erector E. R. Fletcher of B&B Gang #11 for reinstatement to his former position with all seniority, vacation rights in addition to pay lost commencing February 9, 1983 and to run concurrently until such time E. R. Fletcher is restored to service."
(MW-83-41/386-22-A)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee respectively within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

A threshold issue in this dispute calls for a determination as to whether Claimant was denied benefit of a fair and impartial hearing account the Carrier not having produced a Carrier official who the Organization maintains was a material witness with pertinent information relating to Carrier's dismissal of Claimant from service.

As concerns the Organization's protest, the Board notes from the transcript of investigation that when the Claimant's representative repeated at the hearing — the request for the presence of this particular official, the hearing officer stated if it was found the Carrier officer's presence was necessary to a determination on the reason for the dismissal, such officer would be asked to appear as a witness.

In the Board's judgment, the hearing officer acted properly relative to the request for the witness. We also believe the hearing officer thereafter reached a proper conclusion that testimony of this particular Carrier official was not material to the nature of the investigatory hearing. In this respect, we think it clear all that officer could have attested to, on the basis of the record as developed, was that he had issued a directive Claimant be dismissed account his having been told that Claimant had been absent from work without proper permission on the dates in question. This fact was brought out, for whatever importance one might want to attach to it, however, by the testimony of two other witnesses, namely, Claimant's immediate supervisor and his immediate foreman. The Board, accordingly, fails to find that for this or any other reason not fully developed that Claimant was denied the principles of a due process hearing.

As concerns the basic issue in dispute which had led to Claimant being dismissed, principally, whether he had been granted permission to be on vacation commencing February 7, 1983, and was therefore wrongfully held to have been absent from duty on February 7 and 8, 1983, we believe the record supports the Carrier's position that Claimant had not been granted such alleged permission to be on vacation.

There is no doubt that the transcript reflects a number of ambiguities relative to the question of whether Claimant had been initially granted permission to be on vacation and then had such authority rescinded as the result of a telephone call to Claimant by his foreman. However, most of the ambiguity comes from the Claimant's testimony or his apparent misrepresentation of material facts to his own representative. In this regard, we find it noteworthy that the foreman adamantly maintained he had neither granted the Claimant permission to be on vacation nor had he telephoned Claimant relative to such matter, and while there is no reason presented to question the veracity of such testimony, there is reason to question the truthfulness or correctness of various representations offered by Claimant or on his behalf by his representative. For example, testimony by and on behalf of Claimant as to the date on which Claimant was alleged to have been granted the disputed vacation by his foreman is attributed to no less than three separate dates (February 1, 3 and 4, 1983). Further, Claimant, on the one hand, states he encountered an automotive breakdown while enroute to work on February 7, after having been notified his vacation was rescinded, and that he had asked a Carrier bridge tender to call the foreman to tell him about such breakdown. On the other hand, in further testimony, Claimant describes the breakdown as having occurred on February 8th, stating he had been called by the foreman to return to work on February 8th.

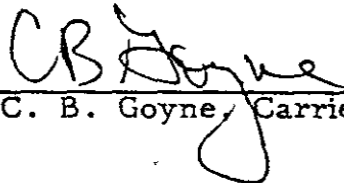
Under the circumstances of record, and in view of Claimant's poor prior disciplinary record during his brief, two-year tenure of service with the Carrier, this Board finds no reason to hold dismissal from service is an extreme or severe penalty.

AWARD:

Claim denied.



Robert E. Peterson, Chairman
and Neutral Member



C. B. Goyne, Carrier Member



M. A. Christie, Employee Member

San Antonio, TX
June 20, 1984