

PUBLIC LAW BOARD NO. 3558

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

AWARD

STATEMENT OF CLAIM:

"1. Carrier violated the effective Agreement when Assistant Foreman J. G. Byrd was unjustly dismissed from service.

2. Claimant Byrd shall now be reinstated to his former position with pay for all time lost, with seniority, vacation and all other rights restored unimpaired, and his personal record cleared of all charges." (MW-86-73)

OPINION OF BOARD

Claimant is an Assistant Track Foreman in the Carrier's Service since August 24, 1978. As a result of charges dated March 10, 1986, the Carrier removed Claimant from service pending the results of an investigation. After hearing on May 8, 1986, and by letter dated May 16, 1986, Claimant was dismissed from service for failing to complete reporting on a personal injury, absenting himself from the job site without authority and failure to report for duty in violation of Rules E, 604, 607, 621 and 806.

On March 6, 1986 (Claimant's first day as Assistant Foreman on Extra Gang 235), at approximately 10:30 a.m., Claimant injured his right shoulder while tightening a nut on a bolt with a track wrench. Claimant immediately informed the Foreman at the site that he was hurt and a Form 2611 was completed at the site by the Foreman, Claimant and members of the gang. Claimant was then driven by another employee to Roadmaster S. E. Mutz' office and arrived at approximately 11:15 a.m. Mutz was not present when Claimant arrived. Mutz arrived approximately 15 to 20 minutes later and the injury was discussed. Claimant testified that while in Mutz' office, he made several requests to see a doctor. Mutz took Claimant to Mutz' vehicle for transportation to a doctor at the Caroline Clinic.

After getting in the vehicle, Mutz stated that he had to make a phone call and went back to his office. When Mutz did not return after a five to ten minute period, Claimant went to his truck and drove to his doctor's office in Lufkin, Texas.

On March 7, 1986, Mutz called Claimant. Claimant explained that he saw a doctor on the previous day and that he was going to seek further medical attention. Claimant advised Mutz that he would not be reporting that day. Mutz again called Claimant later that day while Claimant was at Memorial Hospital in Lufkin for the purpose of having X-rays taken of his shoulder. Mutz instructed Claimant to see Dr. Reid in Lufkin, which instruction was followed. Claimant testified that after seeing Dr. Reid, Claimant contacted Mutz' office and left a message that he saw Dr. Reid.

By letter dated October 6, 1986, and received by Claimant on October 16, 1986, Claimant was advised by the Carrier that it was of the opinion that the discipline had served its purpose and that Claimant was reinstated to service and that he should report within ten calendar days from receipt of the letter else his seniority would be forfeited. On October 21, 1986, Claimant advised Division Engineer R. A. Englebert that he had a doctor's appointment on October 23, 1986 concerning the shoulder injury. On October 28, 1986, Claimant advised the Carrier that he was under a physician's care and could not return to duty. Claimant's physician, Dr. Sassard, subsequently submitted documentation to the Carrier dated November 13, 1986, indicating that Claimant was under his care for shoulder pain and that it was felt that the degree of pain was sufficient to keep Claimant from safely performing his duties.

Initially, we agree with the Carrier that the portion of the Claim seeking reinstatement is moot. By letter dated October 6, 1986, Claimant was reinstated.

As we view this matter, the issue to be decided is whether the disciplinary action should be removed from Claimant's record. Upon our review of the evidence, we cannot say that the Carrier's action can be supported by substantial evidence. Clearly, the Carrier knew of the injury immediately after it occurred. Injury reports were filled out at the job site and Roadmaster Mutz was advised about the injury. Moreover, Mutz had several

conversations about the injury with Claimant on the day following the injury. Considering all that occurred, the fact that another report may not have been completed cannot be the basis for discipline in this case. We note in this regard that Claimant testified that when he spoke to Mutz on March 7, he offered to complete more forms. We further note that Mutz testified that he did not inform Claimant of any problems with the information contained on Claimant's Form 2611.

Similarly, under the circumstances, we can find no basis for the Carrier's imposition discipline because Claimant drove to his own doctor on the date of the injury. Claimant waited for Mutz to take him to a doctor. When Mutz did not immediately return from making a phone call, Claimant drove on his own to a doctor for medical attention. The circumstances do not lead us to conclude that Claimant left the job site without authority.

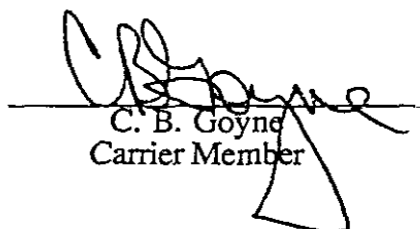
Finally, on March 7, 1986, Claimant informed Mutz that he was receiving further medical care for the injury and in fact, was receiving that care. There is no basis to conclude that Claimant improperly failed to report for duty on that date.

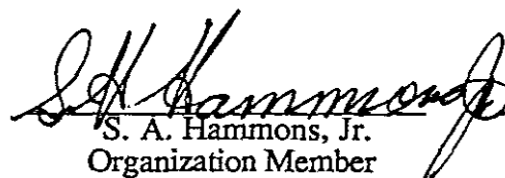
Based on the above, we shall therefore require that Claimant's record be cleared of the disciplinary action taken. Since Claimant was unable to work after the date of the injury, there shall be no compensation for time lost.

AWARD:

Claim sustained in accordance with Opinion. Claimant's record shall be cleared of the disciplinary action taken. There shall be no compensation for time lost.


Edwin H. Benn, Chairman
and Neutral Member


C. B. Goyne
Carrier Member


S. A. Hammons, Jr.
Organization Member

Houston, Texas
September 14, 1987