

PUBLIC LAW BOARD No. 3626

AWARD No. 2

Docket No. 2

Case MW-83-31-CB

PARTIES TO DISPUTE:

Southern Pacific Transportation Company  
(Eastern Lines)

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

1. Carrier violated the effective Agreement when Track Laborer F.L. Biggs was unjustly dismissed by letter dated August 9, 1983.
2. Claimant Biggs shall be reinstated to his former position with pay for all time lost, with seniority, vacation and all other benefits restored intact.

OPINION OF THE BOARD

The Claimant was absent from employment (without authority) on certain dates, in violation of Carriers Rules and Regulations. As a result, he was dismissed from service. A hearing was requested and, after the hearing, the decision to dismiss the Employee was affirmed.

A review of the record shows that the Employee was on furlough and he was called to protect a temporary vacancy at Garrison, Texas. According to the Carrier, the Claimant was not required to accept the assignment and he was specifically advised that there were no living quarters furnished nor would he receive any monetary allowance.

Despite those warnings the Employee accepted the position and reported to work on July 21, 1983, however, he was absent thereafter until he was finally dismissed.

The Claimant asserted that he did not understand, until after he had accepted and worked the position, that he was not obligated to accept. He also stated that he believed that certain living accommodations were available. In any event, the Organization asserts that the penalty of dismissal is excessive and "grossly disproportionate" to the severity of the offense under consideration.

Numerous awards in this industry have held that it is not appropriate for a Board such as this to substitute its judgment for the credibility determinations made prior to submission of the case to the Board, and those credibility determinations should not be disturbed unless they are arbitrary and/or capricious. Here, there was testimony presented that the Employee was specifically advised that he was under no obligation to accept the assignment and also that there were no immediately living accommodations at the work site.

The fact that the Claimant was not present at the hearing in this matter, through his own volition, is not proof of guilt, but it does indicate some disregard for future employment relationships. We have also noted the Employee's discipline record shows that he has had prior violations of the very rule here under review. . We will deny the claim.

#### FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

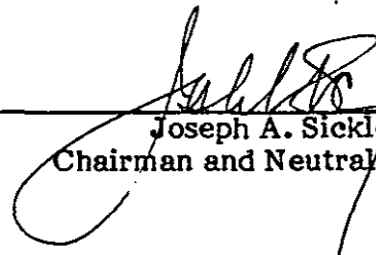
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

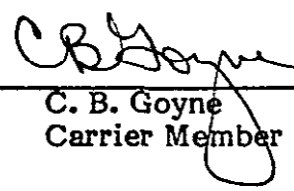
This Board has jurisdiction over the dispute involved herein.


The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

I. Claim denied.

  
\_\_\_\_\_  
Joseph A. Sickles  
Chairman and Neutral Member

  
\_\_\_\_\_  
C. B. Goyne  
Carrier Member

  
\_\_\_\_\_  
M. A. Christie  
Employee Member

10-19-84  
Date