

PUBLIC LAW BOARD NO. 4225

Claimant - G. B. Bravo
Award No. 3

Case No. 3

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Union Pacific Railroad

STATEMENT
OF CLAIM

That the Carrier's decision to suspend Claimant from its service for a period of sixty (60) days, was excessive, unduly harsh and in abuse of discretion and in violation of the terms and provisions of the current Collective Bargaining Agreement.

That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, the Board finds that the Parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Special Board of Adjustment is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

On December 23, 1988, the Claimant went to Mexico to allegedly visit his mother who was ill. Prior to leaving he requested a leave of absence to begin January 3, 1989 until

January 23, 1989. He was unable to obtain permission for such leave of absence and on December 20, 1988 he sent a written request for a leave of absence which was received by D. C. Jones, who, on January 3, 1989, denied the request and sent notice by certified mail to the Claimant's last known address. The notice was refused on at least two occasions.

The Claimant returned from Mexico on January 23, 1989. On January 25, 1989, he contacted Jones, and asked whether he could return to work. He was told at the time that he had improperly applied for the Leave of Absence and was advised there would be a formal investigation to determine whether he was absent without authority. The investigation was held on February 3, 1989. On February 17, 1989, he received a letter from the Carrier which indicated the evidence proved he had violated the following rules:

General Rule A: Safety is of the first importance in the discharge of duty. Obedience to the rules is essential to safety and to remaining in service. The service demands the faithful, intelligent and courteous discharge of duty.

General Rule B: Employees whose duties are prescribed by these rules must have a copy available for reference while on duty.

Employees whose duties are affected by the time table and/or special instructions must have a current copy immediately available for reference while on duty. Employees must be familiar with and obey all rules and instructions and must attend required classes.

If in doubt as to the meaning of any rule or instruction, employees must apply to their supervisor for an explanation.

Rules may be issued, cancelled or modified

by general order, time table or special instructions.

When authorized by superintendent, general orders or special instructions may be cancelled, modified or issued by train order form Q or track bulletin.

Effective April 27th, 1986.

Rule 600 under Other General Rules.

To Whom Employees report: Employees whose duties are prescribed by these rules will report to and comply with instructions from the superintendent, and such others as may have the proper jurisdiction. They will comply with instructions issued by officers of the various branches of service when applicable to their duties.

Rule 604, Duty -- Reporting or Absence: Employees must report for duty at the designated time and place. They must devote themselves exclusively to the company's service while on duty. They must not absent themselves from duty, exchange duties, or substitute others in their place without proper authority.

Rule 607, Parts 2 and 3, Conduct: Employees must not be (2) negligent (3) insubordinate.

The Claimant was suspended for thirty (30) days, which was to be served concurrent with another thirty (30) day suspension which had been deferred from an earlier Absence Without Authority charge.

It is apparent to the Board that the Claimant was unwilling to seek the proper authority for his absence which he knew would extend well into the month of January. Instead he preferred to send a letter to a supervisor who had already advised him he could not grant his request. Since he was told by two different supervisors he would have to return to work unless he received

permission from Supervisor Wright, there can be no doubt he did not follow proper instructions and knew he would be Absent Without Authority. His actions following his return also support this contention. He did not simply return to work, but called to ask if he could return to work. In addition, he brought documentary evidence to substantiate his story.

It is troublesome when doctor's statements come into question. However, in this case, either the doctor is unbelievable or else the Claimant lied earlier about the necessity of a bereavement leave to attend the funeral of his mother on December 8, 9, and 10, 1988. In either case, it does not bode well for the Claimant. At one time or the other he was not reporting the truth.

The Union raised the question of the accuracy of the testimony of the Supervisors regarding the days the Claimant actually worked in December, 1988. The Carrier's representatives are not without problems in this area. While they both testified the Claimant did not work December 18-23, 1988, his work history clearly shows he was working. Which is what the Claimant contended during his testimony. However, as discussed below, this does not eliminate the fact the Claimant ignored the instructions given to him by the two Supervisors. The Board does not believe the discrepancy between the testimony of the Supervisors and the work record is sufficient to excuse the Claimant's behavior.

The only question remaining before this Board is whether or not the penalty issued to the Claimant was appropriate. In

considering rule violations, insubordination ranks among the most serious. There is a constant awareness among Boards and employees, that when employees are given a directive by management, even one which they believe violates their rights, they are to comply with the instructions and then file a claim. This was not done by the Grievant. And while, the circumstances of an ill parent might normally mitigate the penalty issued to a claimant, it cannot be considered in this case. As mentioned above, the Claimant requested a bereavement leave on December 8-10, to attend his mother's funeral. If, as the Claimant testified, it was another employee who requested the leave, it was his burden to prove. He should have requested the testimony of the other employee. He did not. The Board is left with no alternative but to accept the work record presented at the hearing. The result is to render the Claimant's testimony unreliable.

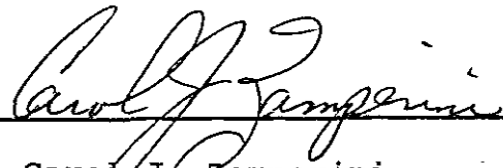
There was no evidence presented to the Board concerning the deferred thirty (30) day suspension issued to the Claimant on October 13, 1988. It is impossible to determine whether the Claimant had either a justifiable reason or mitigating circumstances for his Absence Without Authority from September 19, 1988 until October 13, 1988. Without a defense, it must be considered the Carrier acted correctly.

AWARD

The Claimant raised no defense relative to the first thirty (30) day suspension the Carrier issued. As to the second thirty (30)

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day suspension, there was sufficient proof that the Claimant violated the rules as charged.
The claim is denied.

A handwritten signature in cursive script, reading "Carol J. Zamperini", is written over a horizontal line.

Carol J. Zamperini
Neutral

Submitted:

June 16, 1989
Denver, Colorado