

Public Law Board No. 4747

Claimant - C. G. Castillo, Jr.
Award No. 2

Case No. 2

PARTIES	Brotherhood of Maintenance of Way Employees
TO	and
DISPUTE	Union Pacific Railroad

STATEMENT OF CLAIM	The dismissal assessed Extra Gang Laborer Cadelario G. Castillo for alleged violation of company rules as indicated in Mr. Altenburg's letter of September 7, 1989 was arbitrary, capricious and unwarranted.
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The claimant's record shall be cleared of the discipline referred to in Part (1) and he shall be returned to service and compensated for all time lost.

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.

The Claimant was notified that a formal investigation was to be held on August 18, 1989 at the office of Manager Track Maintenance, Depot Building, La Grande, Oregon. The purpose of the hearing was to determine whether he had been absent without authority on July 31, 1989, therefore violating Rules A, B, and

604 of Form 7908, Safety, Radio and General Rules for all employees, effective April 28, 1985, Revised April 27, 1986.

Said rules reading as follows:

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.

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 timetable 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, timetable 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.

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.

The hearing was actually held on August 25, 1989. The

following facts were brought forth during the investigation and from the Claimant's Employment Record. The Claimant was originally hired in March, 1976. In November, 1976, he was dismissed for violating Rule 702. He was reemployed on January 7, 1977 only to be terminated on a Rule G violation on January 24, 1977. One month later the Claimant was reinstated. From then until 1979, the Claimant was dismissed and reinstated on three other occasions for violating Rule 702, AWOL. His record subsequently remained clear until 1988. During that year he was assessed demerits twice for violating Rule 604, again Absence Without Authority. In 1989, he was issued a letter of counsel, a thirty (30) day deferred suspension and finally the current dismissal, all dealing with absenteeism. The incident which precipitated the discharge occurred on July 31, 1989. On that day the Claimant was to have reported to work at 6:00 a.m.. He failed to report for work and did not call his supervisor until sometime around 10:00 a.m., at which time he was advised not to report. If he had been allowed to report it would have taken him another 1-1 1/2 hours to arrive at his reporting site.

Over the last thirteen years the Claimant has been disciplined no less than nine times for being Absent Without Authority (unauthorized absence). Not counting the current dismissal, he has been discharged four times, issued a total of 45 demerits, a letter of counsel, and a thirty-day deferred suspension. On one hand it would appear the Carrier has been far too lenient with the employee and has established a pattern of dismissing him only to reinstate him at a later date. This

Board would normally frown upon the Carrier's pattern of actions because it sets up an employee and causes him to expect the employer to eventually rescind the discharge and grant a reinstatement. However, in this case, the Carrier altered its pattern and instituted a policy of progressive discipline in July, 1988. At that time, they issued the Claimant, who had not been disciplined for ten years, a minimal penalty for his failure to report to work. For subsequent violations of the same rule he was issued increasingly severe penalties. If the Claimant had any doubts as to the cumulative effect of this progressive discipline, he should have consulted his supervisors.

The Carrier has every right to expect its employees to show up for work when they are assigned unless they have been excused. The Claimant, for whatever reason, has a serious problem in either not reporting to work or not reporting to work on time. Since this is not a new problem, the Employee should have figured out a way to assure he would be awakened in time for work. If there were other problems contributing to his difficulties, he should have discussed these with management and made arrangements to have those problems resolved. The Board has to ask the question of whether the Carrier took the necessary actions to give the Claimant an opportunity to alter his behavior by issuing the lowest level of punishment before proceeding to more severe discipline. Clearly, the answer is that they did.

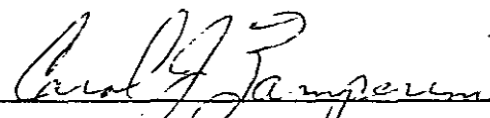
Even though the Claimant's employment record, absent his

attendance problem, is a good one, his frequent absence without authority cannot be ignored. The efficiency of any Company rests with productivity. They hire a certain number of employees because they have determined it to be the number needed. If an employee does not report to work or arrives late, it disrupts the work scheduled to be completed during that shift. It is not fair to the rest of the crew or to the Carrier.

Over the last year, the Carrier has attempted to use progressive discipline to stress to the Claimant the importance of reporting to work when assigned. He has failed to modify his behavior. The Carrier was justified in dismissing the Claimant.

AWARD

The Claim is denied.



Carol G. Zamperini
Neutral

Submitted:

November 28, 1989
Denver, Colorado