

PUBLIC LAW BOARD NO. 4747

Claimant - Tony Lee
Award No. 8
Case No. 8

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

STATEMENT OF CLAIM The thirty (30) days suspension assessed Track Subdepartment employee Tony Lee for alleged violation of various company rules as indicated in Mr. Parker's letter of January 9, 1992, is arbitrary, capricious and unwarranted.

In light of (1) above, the claimant's record shall be cleared of the discipline referred to above and he shall be compensated for all time lost.

FINDINGS

The Claimant was employed by the Union Pacific Railroad on September 1, 1979. With the exception of furloughs in 79, 82, 83, 88, he has worked for the Carrier continuously. According to the evidence adduced at hearing, the Claimant has a relatively good employment record, although, there are indications that he was guilty of being absent without authority, as well as, being tardy on occasion. For example, on July 16, 1990, he was issued a Letter of Counsel, which read in part:

In reviewing timekeeping documents I have observed that you are absent from work with some frequency. I do not know whether these absences are authorized or unauthorized.

If you have personal or family problems that prevent you from working regularly, you should feel free to discuss the matter with the undersigned or your foreman.

Unauthorized absenteeism is not in conformity with company Rule 604 of of (sic) Form 7908 and could result in disciplinary action if continued. It should also be pointed out that your position is scheduled to work eight hours per day, five days per week under ordinary circumstances, and frequent absenteeism not only affects productivity, but likewise impacts adversely upon your co-workers.

Subsequently, the Claimant was given a fifteen (15) day deferred suspension for violating the same Rule dealing with tardiness.

The action which precipitated the disciplinary action which is before this Board occurred on December 2 and 3, 1991. According to the record, the Claimant was absent on those two days, which followed Thanksgiving Holiday, and did not call in to report prior to his scheduled shift. While he did bring in a doctor's excuse the following day, December 4, 1991, the Supervisor did not believe the excuse was of sufficient detail to fully apprise him of the reason for the Claimant's absence. Furthermore, the Carrier felt the Claimant erred in not calling in as he had been previously directed. At that point, they offered the Claimant a waiver which included a fifteen (15) day actual suspension which was rejected. A formal hearing was conducted on December 20, 1991.

After reviewing the evidence from the hearing the Carrier issued the Claimant a thirty (30) day actual suspension.

After reviewing the facts in this matter, the Board concludes that the Claimant was guilty of violating Rule 604, which reads as follows:

Rule 604: Duty, Reporting or Absent.

Employees must report for duty at the designated time and place. They must devote themselves exclusively to the Company service while on duty. They must not absent themselves from duty, exchange duties, or substitute others in their place without proper authority.

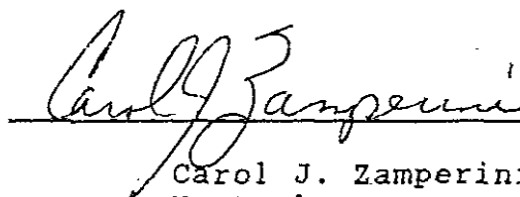
Understandably, the Carrier is somewhat dismayed at the Claimant's failure to respond in a more positive manner to the deferred suspension issued October 10, 1991. He will have to learn to take the counseling of Supervisors more seriously. The

very least he can do is contact his employer before his shift to advise them of his impending absence or tardiness. Either an employee wants to work or s/he does not. They are not free to make their own schedules. The Board recognizes that the Carrier did resort to progressive discipline in as much as the Letter of Counsel was followed by a fifteen-day deferred suspension and then the thirty (30) day actual suspension. However, the basic tenet of progressive discipline is to issue the least amount of discipline necessary to convince an employee to alter his/her unacceptable behavior. The Board is not convinced that a suspension of fewer days would not have had the necessary effect. Regardless, the Claimant had been issued a fifteen (15) day deferred suspension which he did not challenge. He should have been well aware that the next time he violated the cited rule he would be required, by Agreement to serve the fifteen (15) day deferred suspension plus any additional justifiable penalty.

The Board believes, however, that the thirty (30) day suspension is excessive. It would be reduced to a fifteen (15) day suspension.

AWARD

The thirty (30) day suspension issued to the Claimant as a result of the evidence adduced at the formal hearing on December 20, 1991, is to be reduced to a fifteen (15) day suspension. The Claimant is to be reimbursed the difference in wages and benefits he lost while serving the thirty (30) day suspension issued on January 9, 1992 and what he would have lost by serving the fifteen (15) day suspension issued in this Award.



Carol J. Zamperini
Neutral

Submitted:

April 30, 1992
Denver, Colorado