

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
SOO LINE RAILROAD COMPANY

Case No. 33

STATEMENT OF CLAIM:

Appeal of Claimant Jorge F. Mendoza's termination from the Carrier's service.

FINDINGS:

On September 20, 1995, the Carrier notified Claimant Jorge F. Mendoza that a formal investigation was being scheduled to determine the Claimant's responsibility, if any, in connection with his excessive absenteeism when he allegedly failed to protect his assignment on September 5, 6, 7, 8, and 11, 1995.

After several postponements, the hearing took place on January 18, 1996. On March 5, 1996, the Carrier notified the Claimant that he had been found guilty of all charges and was being terminated from the Carrier's service effective that date.

The parties being unable to resolve the issues, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case and we find that the Carrier has presented sufficient evidence that the Claimant was guilty of continued excessive absenteeism when he failed to protect his work assignment on September 5, 6, 7, 8, and 11, 1995. Although the Claimant indicated at the hearing that his wife had received word that the Claimant had been instructed not to come to work, there was no

evidence presented from the wife or from any other witness to support the fact that such a call had been received. Moreover, the caller was not identified by the Claimant at the hearing. There was no evidence other than the hearsay testimony of the Claimant that his wife had received some word that the Claimant did not have to report for work. Although the record is somewhat confused, the Claimant took the position that his wife received a call from somebody who she couldn't identify indicating that he had been displaced from his position.

A thorough review of the record makes it clear that the Claimant's unsupported excuse is insufficient to justify his failure to show up for work on five consecutive days. The Claimant admitted in his testimony that when he has been furloughed in the past, he has called people to determine his new assignment or what was to occur. He did not do that in this case. Consequently, he was properly found guilty of failing to protect his assignment on those five days.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

In this case, the Claimant's service record reflects that he has been assessed a forty (40) day suspension for excessive absenteeism, a twenty (20) day suspension for excessive absenteeism, a ten (10) day suspension for excessive absenteeism, and a five

(5) days suspension for being absent without authority. There is no question that after a Claimant has accumulated an absenteeism record such as that, the Carrier would have a sufficient basis to terminate him if he continued to fail to protect his assignment. The Claimant in this case once again failed to perform as required and this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated him. Therefore, the claim will be denied.

AWARD:

Claim denied.



PETER R. MEYERS
Neutral Member

Dated: April 29, 1996