

AWARD NO. 118

CASE NO. 189

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES) Brotherhood of Maintenance of Way Employees
)
 TO) and
)
DISPUTE) St. Louis Southwestern Railway Company

Appeal of dismissal of Extra Gang Laborer Frank D. Burley on
May 31, 1973.

FINDINGS:

Claimant was assigned as a laborer on Extra Gang No. 21. He failed to report for work during the entire week of May 21, 1973. When he reported for work on May 29, 1973 his foreman requested that Claimant furnish either written authority to be absent or medical verification that he had been absent because of illness. Claimant refused to do so contending that it was not a requirement. Two days later Claimant was dismissed from Carrier's service.

On June 1, 1973 Claimant's representative requested a hearing and it was scheduled for June 15, 1973 at 8:00 a.m. in Tyler. At the appointed time for hearing Claimant was not present. His representative was present. The parties waited for Claimant to appear until 8:30 a.m. and then commenced the hearing which lasted for five minutes. Immediately after the hearing (at 8:35 a.m.) Claimant telephoned to say he was still in Commerce, approximately 82 miles from Tyler.

There was no request for postponement prior to the commencement

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of the hearing, and it appears from the record that Claimant's representative agreed to proceed with the hearing without Claimant's presence.

A careful review of the record, including the hearing transcript, compels the conclusion that Claimant was given a fair and impartial hearing despite the brevity of the hearing and his unexplained absence. The Board further finds that the substantive evidence of probative value warranted the action taken by Carrier. Claimant was absent without permission on the dates charged. The evidence further revealed that he had laid off frequently following pay days, and had been warned on numerous occasions regarding his absences from duty without permission.

There is nothing in the agreement between the parties that requires a Claimant be present before a hearing can commence; it is sufficient that his representative be present to protect Claimant's interests, particularly where, as in this case, Claimant wilfully refused to appear.

AWARD

Claim denied

M. L. Ewin
Carrier Member

M. J. Burns
Neutral Member

A. J. Cunningham
Organization Member

Date: March 18, 1977