

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 146
Case No. 216

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

STATEMENT
OF CLAIM

1. Carrier violated the effective Agreement on March 10, 1976 by unfairly and arbitrarily dismissing Extra Gange Laborer Verdell Suell from service, account of unauthorized absences.
2. Claimant Verdell Suell shall be reinstated to Carrier's service, shall be compensated for all lost wages, and shall have all seniority and other rights returned unimpaired."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant was dismissed on March 10, 1976 allegedly for absenting himself from duty without proper authority and failed to protect his assignment on March 8 and 9, 1976. Following a hearing on March 24, 1976, the dismissal was reaffirmed by Carrier.

Claimant was working on Extra Gang 36 located at Jonesboro, Arkansas, which was approximately 148 miles from his home. Having been home on the weekend, Claimant left his home at approximately 2:30 a.m. on the morning of March 8, 1976 to return to Jonesboro for his regular assignment. Having difficulty with his car, Claimant was unable to proceed with the trip. At 4:00 a.m. on that morning he attempted to call his foreman collect, however the foreman refused to take the collect call. Claimant returned to his home and called Carrier again, talking with Assistant Engineer Bristow and informed him of what happened. His testimony (unrebutted) was that Mr. Bristow indicated everything was alright, that he should get his car fixed and report for work the next morning, March 9th. On March 9th, Claimant was ill with a fever and reported for work late. He

then went home having found his Gang had left and stayed in bed all day. Later in the day he reported again to the substitute foreman but was told that the Roadmaster wanted to see him. On the following morning, as ordered, he reported to the Roadmaster at 6:30 a.m. to explain his absence. Claimant presented his car repair bill as proof that he was unable to make it to work on the 8th, but the Roadmaster indicated that this was no excuse and removed him from service.

Carrier argues that its Operating Rules (specifically Rule M-810) indicate that failure by employee to protect their employment shall be sufficient cause for dismissal. Carrier asserts that it had every right to discipline Claimant based on his having no permission to be absent on the days in question and having an inadequate excuse.

The facts indicated above have not been rebutted. Claimant made two attempts to report his inability to appear at work on March 8. In the first instance, the foreman refused to accept a collect call from him and in the second instance, he talked to the Assistant Division Engineer. Those facts are clear and unrebutted. In the Board's judgment, Claimant made every reasonable effort to report his impending absences which could be expected under the circumstances. Consequently Carrier's decision to terminate him for the unauthorized absence is both arbitrary and without just cause. The claim must be sustained.

AWARD

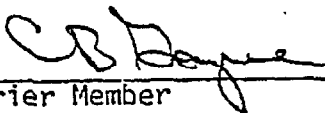
Claim sustained

ORDER

Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I.M. Lieberman, Neutral-Chairman



Carrier Member



Employee Member

October 19, 1979
Houston, Texas