

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. Carrier violated the Maintenance of Way Agreement, especially but not limited to Rule 6-Discipline and Grievances, when it dismissed Laborer Willy Washington on March 31, 1976 under Rules M-810 and M-811 for alleged absence without authority, beginning March 18, 1976.
2. Laborer Willy Washington to be reinstated to former position with seniority, vacation and all other rights unimpaired; that charge be stricken from his record and compensation allowed for all time lost beginning April 1, 1976, continuing until date that he is reinstated."

FINDINGS

Upon the whole record, after hearing, the Board finds that 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.

This is a discharge case in which Claimant was dismissed for being absent from March 18, 1976 until he was dismissed on March 31, 1976 without authority. After investigation and hearing, the dismissal was sustained by Carrier.

A review of the record of this dispute indicates that Claimant was absent for the first part of the period in question due to being in jail. The second part of his absence was due to having some personal and domestic problems. On March 22, 1976 Claimant had sent a telegram to the Roadmaster indicating that he had domestic problems and requested to be off until March 29. He was not, however, granted permission for this absence.

It is well established that being held in jail does not constitute unavoidable absence for good cause. (see Third Division Award 19568, 18816 and 12993, among others) In all of those Awards and as this Board holds, being held in jail as a consequence of

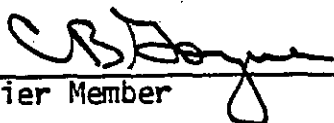
Claimant's own conduct cannot be regarded as a justifiable reason for not protecting his assignment. In addition, in this case, Claimant was absent for a considerable period after being released from jail without proper authority. Claimant had been employed by Carrier for approximately two and a half years and had had significant earlier problems, prior to this incident, with respect to his attendance. He had been warned as well as disciplined earlier. Under the circumstances, in view of Claimant's obvious guilt of Carrier's charge and his prior record, the remedy imposed must not be tampered with and is appropriate for the particular difficulty involved. It cannot be considered arbitrary or capricious.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman



Carrier Member



Employee Member

October 19, 1979
Houston, Texas