

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 152
Case No. 236

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

STATEMENT "Claim of the System Committee of the Brotherhood that:
OF CLAIM

1. Carrier violated the effective Agreement when No. 1 Bridgeman R.L. Blalack was unjustly dismissed on August 27, 1979.
2. Claimant Blalack shall now be reinstated to his former position with pay for all time lost, vacation, seniority, and all other rights 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 had been employed by Carrier since 1973. By letter dated August 27, 1979, Claimant was dismissed for being absent without authority on that date. Based on his request a formal hearing was held on September 25, 1979 following which Carrier reaffirmed its decision to dismiss Claimant.

The transcript of the investigation reveals that Claimant was absent from work from August 21 through August 27, the date on which he was dismissed. On September 4, 1979, he returned to work presenting to his foreman a disability certificate stating that he was unable to perform his duties due to illness for the period in question. The transcript also indicates that Claimant states that he attempted to reach someone in authority on August 20 and again on August 22, 1979. He insists that he gave a message to another employee on August 22 which was to be relayed to his foreman indicating that he was out

sick. There was no other indication of any attempt to communicate with Carrier by Claimant. Carrier's testimony, on the other hand, indicates that no message whatsoever had been received from Claimant by either the foreman or the assistant foreman or anyone else in authority on the dates in question.

Petitioner insists that Claimant's absence was due to the fact that he was ill and hence the penalty and decision of Carrier were in error. Carrier indicates that there was no charge with respect to Claimant except for the date of August 27. It was clear, according to Carrier, according to the testimony as well as its records, that Claimant had made no attempt to request permission to be off on August 27 either prior to that date or on that date. Hence, Carrier concludes that it was justified in finding that he was absent without authority on the date in question. With respect to the penalty, Carrier insists that it was an appropriate penalty particularly in view of the fact that Claimant had been given warnings with respect to being absent without authority on five earlier dates in 1979.

From the record of the investigation, there is no question but that Carrier's conclusion that Claimant was absent on the date in question without authority was amply established. Claimant admitted that he made no attempt to contact Carrier with respect to his absence on August 27. In fact the only verified attempt to report his absence on that date (and for the other days as well) occurred on September 4 following his dismissal when he appeared with a letter from a doctor indicating that he had been ill. Under these circumstances again it must be pointed out that Carrier's decision that Claimant was guilty of the charges is clear and unequivocally justified. With respect to the penalty however, one factor must be taken into consideration. Since the unrebutted evidence indicates that Claimant was indeed ill on the day in question, there is no doubt but that he had an excuse which should be taken as a mitigating circumstances with respect to the particular absence involved in this charge. However, it must be pointed out that Claimant's behavior in terms of his absence was irresponsible and cannot be condoned.

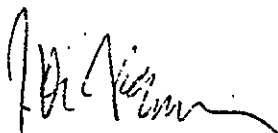
Carrier must know whether its employees intend to report to work and they have a responsibility for notifying Carrier at minimum prior to the day of absence or even on that date as to the reasons for their absence and their anticipation for return. In this instance, Claimant did neither. It is this Board's judgment therefore that under the circumstances of this particular case, there was ample justification for the decision of guilt but under the particular circumstances of Claimant's illness the penalty of dismissal was harsh and unwarranted. Therefore Claimant will be reinstated to his former position with all rights unimpaired but without pay for time lost. Particularly in view of his prior record he should be on notice that his attendance habits must improve in order for him to retain his job.

AWARD


Claim sustained in part; Claimant will be reinstated to his former position with all rights unimpaired but without compensation for his time lost.

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

January 1981
Houston, Texas