

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 153
Case No. 237, 238, 239

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 Track Laborers Perry G. Gilliard, Willy L. Perry and Ricky Walker were unjustly dismissed by letters dated October 1, 1979.
2. Claimants Gilliard, Perry and Walker shall now be reinstated to their former positions 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.

The three Claimants herein were Extra Gang Laborers on Extra Gang No. 10 on the dates in question. All three men had seven months of service with Carrier at the time they were dismissed. The three men were dismissed on October 1, 1979 for failure to report for duty on September 28 and October 1. Their failure to report for duty was interpreted as a violation of Carrier's Rules and Regulations Rule No. 810. The three Claimants requested a hearing and were accorded such a hearing following their dismissal. Subsequent to the hearing, Carrier reaffirmed its decision to dismiss all three men.

When Extra Gang No. 10 was moved to Malden, Missouri, the house trailer which Claimants were assigned to live in did not arrive but was lost en route. The foreman of the gang attempted to assign the three men under the circumstances to another trailer. The three

Claimants indicated that that was not an adequate or livable abode in view of a gas leak and a hole in the wall among other things and hence, the three men chose to obtain lodgings on the night of September 27 in a motel at Malden, Missouri.

The motel which the men were staying at was four miles north of the Company trailer camp. On the morning of September 28, 1979 when the Claimants awoke, they claim it was very foggy and they could not get their car started immediately. After getting the car started, the men proceeded to the location where the gang assembles at work time. They were delayed by a railroad crossing being blocked and arrived at the assembling point after the gang had left. The men returned to their motel since they had been previously instructed that they were not to drive their car to the job site. Hence, they did not report for work on September 28, 1979. The men also did not report for work on October 1 since they had heard "rumors" that they had been fired.

The transcript indicates that the job site which the men were working at was approximately fifteen miles from the trailer camp at Malden. Further, the Company's bus had no difficulty in driving that morning even though it was foggy. In addition to other matters, Carrier's foreman indicated that the men did not have a valid reason for being absent on September 28 since if they had driven to the job site he would have let them work since he's never sent men back home because of driving their personal vehicle to the job site. Therefore, the Carrier concludes that the three Claimants had no legitimate reason for being absent on September 28 and obviously no reason whatsoever with respect to October 1. Petitioner, on the other hand, maintains that due to the circumstances in this case, weather which was beyond the control of Claimants, the Carrier's action in dismissing the three men was harsh and unreasonable. The record indicates that Claimant Perry did not appear at the investigative hearing which he had requested. Furthermore, he had been absent without proper authority on June 18, July 10, July 23 and August 6 of 1979. He had been dismissed from the service of Carrier and was reinstated to service on August 20 without pay for time lost. The record also indicates that Claimant

Gilliard had been absent without authority on August 7 and September 4. There is no indication of a prior absentee record in the case of Claimant Walker.

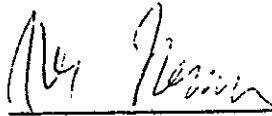
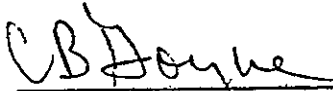
An analysis of the transcript of the investigations involved in this dispute indicates that the assignment to a trailer and the condition of the trailer is not relevant to the ultimate dispute. The sole question before this Board is whether indeed there were circumstances which warranted the employees absences on September 28 and October 1 or whether Carrier was correct in its conclusion with respect to the three employees' guilt. It is the opinion of this Board that the evidence adduced at the hearing substantially supports Carrier's conclusion with respect to the three employees. There was no justification for their absence on September 28 or October 1. With respect to Claimants Perry and Gilliard, this was not their first offense for an identical type of infraction. Under the circumstances the Board does not view Carrier's conclusion as to the penalty with respect to these two Claimants as being excessive, harsh or discriminatory. This is particularly true in view of their short service. With respect to Claimant Walker, however, this was the first instance of any type of infraction with respect to being absent on the record. Under that circumstance, we do not view his absences on the two days as warranting dismissal. Hence, Claimant Walker only will be offered reinstatement to his former position with all rights unimpaired but without compensation for time lost. The claims with respect to the other two Claimants must be denied.

AWARD

1. Claimant Walker will be reinstated to his former position with all rights unimpaired but without compensation for time lost.
2. The claim with respect to the other two Claimants is denied.

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