

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 154
Case No. 240

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 Laborer Horace R. Ellsworth was unjustly dismissed on October 2, 1979.
2. Claimant Ellsworth shall be reinstated to his former position with pay for time lost, seniority, vacation, 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 herein started to work for Carrier on March 19, 1979. He was a laborer on Extra Gang No. 10. On the date involved in this dispute, members of the Extra Gang were headquartered in house trailers. On October 1, 1979 the Claimant, together with the other members of the Gang worked from 6:00 A.M. to 11:00 P.M. On October 2, Claimant did not report for work and was dismissed from service by a formal notice that day. The Claimant requested a hearing in a letter dated October 4, 1979 which was granted to him. At this investigative hearing, Claimant did not appear. Following the hearing, Carrier reaffirmed its decision to dismiss Claimant.

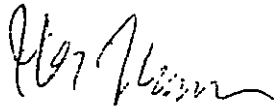
The testimony indicated at the hearing sets forth the circumstances of Claimant's refusal to go to work on October 2. It appears that the foreman knocked on the door of the trailer on the morning in question and asked the men to come out for transportation to the job site. When he went back a second time Claimant indicated that he was not going to work and indicated that he was tired. The other employees did, indeed, go to work (with one exception).

At the outset it must be noted that Claimant's failure to appear at the hearing convened at his request was at his peril. There is nothing in the Collective Bargaining Agreement which requires that a Claimant be present before a hearing which he has requested can commence. Claimant's representative was present on the day in question and Claimant's willful refusal to appear in no way impairs the validity of the proceedings.

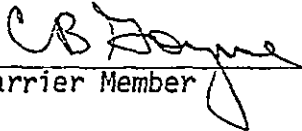
There is no question but that Claimant was guilty of the charge of refusing to come to work without proper authority on the date in question. Furthermore, the record indicates that in his relatively short period of service he had been absent without authority on three prior occasions and received written warnings on those three occasions. Under the circumstances, therefore, of the record of Claimant, his short service and the willful nature of his absence on the day in question, the claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman



Carrier Member



Employee Member

January , 1980
Houston, Texas