

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 155
Case No. 242

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. That Carrier violated the effective Agreement when Mr. Jessie L. Brentley was unjustly dismissed on September 5, 1979.
2. Claimant Brentley 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 as an Extra Gang Laborer on Extra Gang No. 10 for approximately six months of service. Claimant was dismissed from service by letter dated September 5, 1979 for failure to protect his job on September 4. Thereafter, Claimant requested a hearing which was granted and the investigative hearing was held on October 4 and October 12, 1979. Following the hearing, Carrier reaffirmed its decision to dismiss Claimant.

The record indicates that on Friday night, September 1, Claimant returned to his home after having worked all week long at Texarkana. This return to his residence was over the Labor Day weekend. On September 4, according to Claimant's testimony, he was driving to work having started from his home at 4:30 A.M. to arrive at Texarkana at 8:00 A.M., the starting time of his gang when he had some car trouble. As a result he claims that he was unable to get to work on the day in question. He did not get to the job site on September 4 but reported on the following day when he was handed his letter of termina-

Petitioner argues that Claimant was a victim of circumstances. He made every legitimate effort to get to work on the day in question but because of his vehicle problems was unable to do so. The Organization relies in part on the well established fact that car trouble is a mitigating circumstance to account for a one day absence from work. Carrier, on the other hand, points out that not only did Claimant not report for work on the 4th but made no effort to communicate with Carrier with respect to his absence. Carrier argues that there can be no question but that Claimant was guilty of failure to report for work without authority which was further exacerbated by his apparent disinterest in his job as indicated by his lack of any communication whatsoever on the day in question. Further Carrier points out that the reasons for the car problems were contradictory as presented to the foreman and later at the hearing. Carrier also refers to the fact, in defense of its conclusion as to the measure of discipline, that Claimant in his relatively short period of service (six months) had been reprimanded for a similar offense on one occasion and had been dismissed on another and reinstated on a lencency basis only two weeks prior to the incident herein.

A review of the transcript of the investigation reveals that there is no doubt but that Carrier produced substantial evidence to indicate that Claimant was absent on the day in question and had not communicated with the Carrier on that day. The fact that he attempted to flag down a car with other employees in it has no bearing on this conclusion. Given the fact that there was significant probative evidence to support Carrier's conclusion as to Claimant's guilt, there remains the sole question as to whether the penalty of dismissal was appropriate. In the Board's view, in the light of his prior record of discipline for the identical offense and his relatively short period of service, there can be no question but that the discipline was neither harsh nor discriminatory.

The claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman



Carrier Member



Employee Member

January , 1981
Houston, Texas