

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 166  
Case No. 253

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

STATEMENT  
OF CLAIM

1. Carrier violated the effective Agreement when Welder Helper Kirk R. Hill was unjustly dismissed by letter dated June 12, 1980.
2. Claimant Hill shall now be reinstated to his former position with pay for all time lost, vacation, seniority and all other rights unimpaired; and the discharge be stricken from his record."

## 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, a Welder Helper, at the time of the incident herein had been employed by Carrier for approximately two years. The facts indicate that on June 11, 1980 Claimant reported for work at approximately 11:30 A.M. which was some four and a half hours following his regular starting time. When he approached his Foreman, his Foreman said if you want to work go back and get your hard hat and gloves and report back here. Claimant never reported back and did not report for work the following day whereupon he was notified that he had been terminated. Following a hearing, at Claimant's request, Carrier reaffirmed its decision to terminate Claimant.

With respect to being tardy on June 11, Claimant indicated that he had been late because he had struck a small puppy with his car on the way to work and had emotional problems with his family and had to take the dog to a veterinarian. His reason for not returning to the Foreman after reporting to work without his hard hat and gloves was

that he could not find his hard hat in his car. He thought he had been terminated automatically at that point and did not report in for work on the 12th either. In short, there is no question but that the facts involved in this matter are not in dispute: Claimant was late for work on June 11 and did not report back after leaving to get his hard hat and gloves and did not report on June 12. Thus, it must be concluded that Carrier has sustained its burden of proof that Claimant was indeed guilty of the charges leveled against him.

With respect to the measure of discipline imposed, the Organization insists that the discipline was harsh and unnecessarily severe. Carrier, on the other hand, indicates that there were no mitigating circumstances involved in the tardiness and subsequent absenteeism by Claimant and furthermore, in view of his poor prior record, Carrier was eminently justified in its decision to terminate him.

An examination of the record of Claimant prior to the incidents involved herein indicates a horrendous record with respect to absenteeism and tardiness as well as another infraction. During the relatively short period of Claimant's tenure, the record is replete with written warnings as well as two suspensions. It is well established that Carrier may indeed take into consideration the prior record of employees in determining the measure of discipline to be imposed for the particular infraction involved. In this instance, the Board must conclude that there were no misunderstandings or mitigating circumstances involved in Claimant's actions on the date in question. Furthermore, in view of his relatively short tenure and bad record with respect to the same infractions as were involved herein, Carrier was eminently justified in determining to terminate him. Thus, the claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman



C.B. Goyne, Carrier Member



M.A. Christie, Employee Member

Houston, Texas  
December 30, 1981