

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 168
Case No. 255

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 Track Laborer Odell Williams was unjustly dismissed on December 12, 1980.
2. Claimant Williams will now be reinstated to his former position with all seniority and vacation rights and any other rights accruing to him unimpaired in addition to all compensation lost, commencing December 12, 1980 and to run concurrently until he is restored to service."

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 Track Laborer, had been employed by Carrier on October 29, 1974. The record indicates that on November 20, 1980, Claimant sustained a personal injury while at work. The record indicates that he worked on November 20 as well as on November 21, 24, 26 and 27. He did not work thereafter. Claimant filed an injury report on December 8, some twelve days after allegedly sustaining the injury. Carrier's rules provide (Rule M of the Rules and Regulations for the government of Maintenance of Way Employees) that:

"Every personal injury suffered by an employee.... must be reported without delay to his immediate superior prior to completion of tour of duty...."

"Employee and his immediate superior must thereafter, without delay and prior to completion of tour of duty, complete required reports on prescribed forms and furnish other required statements to proper authorities."

On December 12 Carrier wrote to Claimant, by certified mail, indicating that he was dismissed from service for violation of Rule M in not reporting the injury as required.


In response to this letter, on December 30, Carrier received a letter from the Claimant requesting a hearing. The hearing was held as scheduled on January 13, 1981 and Claimant was not present. By letter dated January 15, subsequent to the hearing, Carrier affirmed its decision to terminate him for the infraction.

Petitioner alleges that the discipline imposed was excessive and grossly disproportionate to the severity of the offense involved. Carrier, on the other hand, argues that in addition to there being no question about Claimant's guilt involved herein, that the penalty imposed was obviously justifiable in view of the fact that Claimant had previously been assessed forty-five demerits for an identical infraction involving his failure to report an injury in 1977.


The facts herein are not in dispute. There is no evidence of any mitigating circumstances to explain Claimant's failure to conform to Carrier's normal rules and regulations. The fact that he had previously been disciplined for an identical offense is a serious and important factor in evaluating Carrier's conclusion to dismiss him. Since there is no question with respect to the guilt of Claimant, the sole question remains that of the degree of punishment decided upon by Carrier. The Board notes that it has been well established that in situations such as this Boards should not substitute their judgment for that of Carrier. The only situation in which Carrier's judgment may be tampered with is under circumstances in which the penalty imposed is clearly arbitrary, capricious, unreasonable or constitutes an abuse of discretion. None of those factors are present in this situation and there is no basis for questioning Carrier's determination. The claim must be denied.

AWARD


Claim denied.



I.M. Lieberman, Neutral-Chairman



C.B. Goyne, Carrier Member
Houston, Texas



M.A. Christie, Employee Member

December 30, 1981