

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 169
Case No. 256

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

"CLAIM OF THE SYSTEM COMMITTEE THAT:

1. Carrier violated the effective Agreement when Track Laborer Ray C. Tyler was unjustly dismissed on February 26, 1981.

2. Claimant Tyler shall be reinstated to his former position with all seniority, vacation rights accruing to him unimpaired, in addition to pay for time lost, commencing February 26, 1981, 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 herein was dismissed from the service of Carrier for absence from his assignment as extra Gang Laborer on February 26, 1981. Following a hearing at Claimant's request, Carrier decided that the testimony at the hearing justified its prior conclusion and it affirmed its decision to dismiss him.

Rule 810 of the Company's Rules and Regulations for Maintenance of Way and Structures provides as follows:

"810. Employees must report for duty at the prescribed time and place, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority. They must not engage in other business which interferes with their performance of service with the Company unless advance written permission is ob-

tained from the proper officer.

"Continued failure by employees to protect their employment shall be sufficient cause for dismissal.

"An employee subject to call for duty must not leave his usual calling place without notice to those required to call him.

"Employees must not sleep while on duty. Lying down or assuming a reclining position, with eyes closed or eyes covered or concealed, will be considered sleeping."

Carrier maintains that Claimant failed to notify to his Foreman of his intention to be absent on February 26, 1981, and his Foreman had no idea of his whereabouts on the day in question. The Organization indicates that on February 25 the Claimant called his home (the gang was working in a camp trailer throughout that particular work week) and found out that his infant daughter was suffering from an asthma attack. Claimant insists that he attempted to contact his Foreman but could not locate him and, therefore, decided to go home to see that his infant daughter was properly cared for. Claimant also maintains that he advised another laborer to tell his Foreman that he would be absent on February 26.

The record is clear and there is no dispute in that the Claimant did not secure permission from his Foreman to be absent and was, indeed, not at work on the day in question. There is no indication that the Claimant attempted to secure permission from his Foreman to be absent as is required. The fact that he had a family emergency, although a rational basis for leaving his work site, does not excuse his failure to inform his Foreman or secure permission to be absent. This is particularly true since he apparently left on the day prior to the absence. Hence, the Board concludes that there is no doubt but that Claimant was guilty of the violation charged by the Carrier.

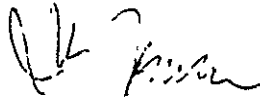
With respect to the penalty of dismissal, Carrier's decision appears to be reasonable in the light of Claimant's prior record. The record indicates that Claimant had been suspended for violations of the same rule at least three times in the past, as well as a suspension for an additional rule involving a serious violation.

Based on the entire record and bearing in mind Claimant's past infractions, the

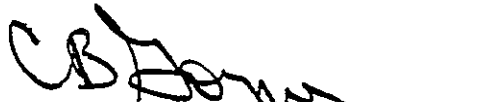
Board cannot find that Carrier was unjustified in its conclusion and in the penalty assessed. It clearly was beyond the realm of being harsh or discriminatory, therefore, the claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman


M. A. Christie, Employee Member
C. B. Goyne, Employer Member

Houston, Texas

May , 1983