

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 175

Case No. 262

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. The Carrier violated the effective Agreement when Track Laborer D. P. Johnson was unjustly dismissed by letter dated August 28, 1981.
2. Claimant Johnson shall now be reinstated to his former position with pay for all time lost, vacation, seniority, all other rights unimpaired, and his record be cleared of all charges."

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, an extra gang laborer, had been employed by Carrier for approximately seven years. On August 19, 1981, while working, claimant sustained a back injury and, accompanied by his foreman, went to a doctor in Paragould, Arkansas, for examination. The doctor examined claimant, diagnosed his problem as a pulled muscle or a sprain and gave him an appointment to return on Friday, August 21. Claimant next appeared for work on August 27, 1981, and was told that he would need a doctor's release to come back to work. After securing such release on that same date, he was not permitted to return to work.

In the interim between August 19 and August 27, the District Maintenance of Way Manager indicated that he had gone to claimant's home, accompanied by claimant's brother, at 2:15 in the afternoon of August 19, the date the claimant was injured. Claimant was not present and, further, the next morning was not present. On August 24 the District Maintenance of Way Manager was notified by claimant's

brother that claimant was in jail outside of Luxora, Arkansas. Evidence indicated that claimant had been arrested for attempted robbery about 7:30 P.M. on August 19 and was released under bail on August 26, 1981. Subsequently, in October, claimant was sentenced to fifteen years in jail and fined \$2,500 for the events which occurred on August 19. His sentence was subsequently suspended.

Claimant was charged with absence without authority. This charge was not proven, according to the organization. The organization maintains that claimant was absent due to a back injury which he sustained while at work. Hence, there was no proof of guilt of the charge which was lodged against claimant. Furthermore, the organization insists, dismissal on unsubstantiated and unproven charges was harsh, excessive and unreasonable.

Carrier maintains that claimant was absent from August 20 until he reported back on August 27 without authority and his absence was caused by his being in jail due to his attempted robbery effort. Since he was to report back to the doctor on August 21, there was no excuse for his absence, since he did not report to the doctor on that date and did not report to work until August 27. His incarceration was the consequence of his own conduct and cannot be regarded as a justifiable basis for not protecting his work assignment.

The record indicates that claimant Johnson was given a fair and impartial hearing and Carrier found him guilty as charged and sustained his dismissal. The evidence adduced at the investigation clearly supported Carrier's contention that claimant was incarcerated as a result of his attempted robbery. Claimant admitted the reason for his absence. This Board has stated previously (Award No. 147) "it is well established that being held in jail does not constitute unavoidable absence for good cause....this Board holds that being in jail is a consequence of claimant's own conduct and cannot be regarded as a justifiable reason for not protecting his assignment." The logic applied in Award No. 147 is equally applicable to this situation and the claimant's position is untenable. The claim must be denied.

AWARD

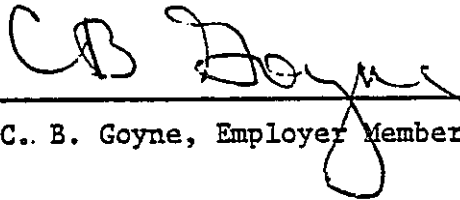
Claim denied.



I. M. Lieberman, Neutral-Chairman



M. A. Christie, Employee Member



C.. B. Goyne, Employer Member

Houston, Texas

September , 1983