SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 177
Case No. 264

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 E. L. Jackson was unjustly suspended August 25, 1981, through August 28, 1981, and had to attend a hearing for this unjust suspension.

2. Claimant Jackson shall now be paid for 40 hours at his respective straight-time rate of pay 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, a track laborer, was suspended for four days for two alleged violations. First, he was charged with failing to report a rule violation on August 25, 1981, which constituted a violation of Rules 801 and 810 of the Company's Rules and Regulations for the Government of Maintenance of Way and Engineering Department employees. Secondly, he was charged with violation of Rule 810 for failing to report on time for duty on August 24, 1981. Following a hearing, the Company sustained its original decision to suspend the Claimant.

Carrier indicated that Claimant Jackson had requested a hearing on the Rule 801 alleged violation only and thus accepted responsibility for violation of Rule 810, that is being late to work on August 24, 1981. Carrier maintains that Claimant was proven guilty of violation of Rule 801 by his failure to report the siphoning of gasoline by his foreman from a Company vehicle into his personal car. Carrier argues that the District Maintenance of Way Manager, Mr. Hoover, witnessed the infraction of the rules himself by the foreman and that the

Claimant was in plain view of the foreman, sitting in the truck a few feet from where the siphoning was taking place. Other members of the gang, according to Carrier, were suspended and did not ask for a hearing. Carrier states further that there was corroboration of the fact that the Claimant did not say anything to Mr. Hoover with respect to the foreman's misuse of Company gas. Thus, the Company concludes that the Claimant willfully violated that portion of Rule 801 which states:

> "Any act of .... misconduct .... affecting the interests of the Company is sufficient cause for dismissal and must be reported."

Claimant's clear failure to report the rule infraction by the foreman was sufficient grounds for discipline, according to the Carrier.

Initially Petitioner indicates that the hearing requested by the Claimant was for the suspension which included the alleged violation of Rule 810 relative to his tardiness. Claimant states that apparently Carrier did not have a case on that score since there was no evidence whatsoever with respect to that matter at the hearing which was held. With respect to the more serious allegation concerning a violation of Rule 801, the organization insists that there was no evidence to establish Claimant's guilt in any misconduct or negligence with respect to that incident. First, there was no evidence that anyone saw Claimant observing the foreman with respect to the siphoning situation, and Claimant denied that he even saw what the foreman was doing outside of the Company truck. Further, the organization argues that the first time that the Claimant might have reported the matter was when Mr. Hoover, the District Supervisor, came out of his office and came to the door of the cab and told everyone to go home and to be in the supervisor's office the following morning at 7:00 A.M. Therefore, the Union suggests that it was impossible for the Claimant to make any report since there was no one to report to. Furthermore, since Mr. Hoover was the very individual who saw the foreman committing the improper act, there was no further purpose in Jackson making a report to Mr. Hoover. In essence, the organization argues that there was no proof that Jackson saw any violation which should have been reported and, hence, there was no justification for the discipline with respect to the violation of Rule 801.

In situations such as this, it is clearly Carrier's responsibility to establish the facts upon which its discipline was based. In the Board's view, the burden of proof in this instance was not borne by Carrier. There is no direct evidence

that the Claimant herein was aware of the particular infraction which he allegedly did not report. Inferential circumstantial evidence is insufficient to establish guilt and impose discipline, based on such guilt. Further, there was no evidence with respect to the alleged violation of Rule 810 adduced at the hearing. Again, it must be emphasized that the Board views the evidence adduced at the hearing to comprise merely conjecture and evidence which does not implicate or establish Claimant's involvement in the alleged misconduct. Thus, Carrier is incorrect in its position in the imposition of discipline in this instance.

The organization also requests compensation for the day spent by Claimant at the investigation of this matter. That claim is without merit. It has been found on numerous prior occasions that employees requested to appear at an investigation relative to a charge against them appear, not as a witness but as a respondent. In such circumstances the individual employee does not appear at the investigation for the benefit of anyone but himself and there is no basis for compensating him for such appearance even if he prevails at the hearing in terms of the ultimate resolution of the dispute. There is no rule support for requiring payment of compensation sought by the organization under the circumstances in this dispute.

AWARD

Claim sustained in part; claimant will be reimbursed for four days during which he was suspended, at his regular straight-time rate of pay, and his record shall be cleared of all charges with respect to the unjust suspension.

ORDER

Carrier will comply with the Award herein within thirty days of the date thereof.

I. M. Lieberman, Neutral-Chairman

M. A. Christie, Employee Member

C. B. Goyne, Employer Member

Houston, Texas