

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 179
Case No. 266

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 machine operator Ben S. Gossett was unjustly dismissed on October 20, 1980.
2. Claimant Gossett shall be reinstated to his former position with pay for all time lost and with all seniority, vacation and other rights unimpaired."

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 was employed by Carrier on October 7, 1980. He had been employed previously by the Chicago, Rock Island and Pacific Railroad since 1977. On October 17, 1980, Claimant was ill and did not report for work. When he reported for work on Monday, October 20, he was dismissed from service for being absent without permission. Following an investigative hearing, the decision to dismiss the Claimant was reaffirmed. Subsequently, on April 16, 1981, the Claimant was reinstated to service on a leniency basis but without pay for time lost. Thus the issue herein is the payment for the approximately six months during which time he was out of work.

Carrier takes the position that Claimant Gossett was proven guilty as charged by the evidence developed at the hearing. According to Carrier, Claimant did not protect his assignment on October 17 and he did not contact his foreman to let him know that he would not be able to protect his position, but left it up to

someone else to deliver his message, according to Carrier. Carrier insists that the Claimant's conduct in not protecting his assignment on October 17 was in direct violation of the Rules and Regulations of the Carrier (Rule 810 specifically) and that this Board has already ruled on the question of absence without proper authority in Award No. 156. Further, there have been numerous awards in this industry also supporting Carrier's authority and right to dismiss employees for being absent without proper authority.

The organization maintains that the evidence is clear in that the Claimant notified Carrier that he was going to be out ill on October 17, 1980, by asking machine operator Stottlemire to notify his foreman that he was sick and would not be able to report for work on that day. In addition, Claimant confirmed his absence by a wire addressed to the Assist Element Manager at Hutchinson, Kansas. The organization also notes that Claimant had only worked for the Carrier ten days and had not been examined on the rules or furnished a copy of Carrier's Rule Book. From these actions, and the testimony adduced at the hearing, the organization concludes that the Claimant made every reasonable effort to comply with the rules as he understood them and attempted to notify Carrier that he was going to be off due to illness. Thus, the claim should be sustained and there was no basis whatever for Carrier's action in what amounted to a six-month unsubstantiated discriminatory layoff.

The Board notes in evaluating the evidence from the hearing requested by Claimant that the supervisor acknowledged that he had been told on October 17 by a machine operator that claimant would be absent due to illness on October 17. This notification was prior to the starting time of the Claimant. It is also clear from the record that whether or not a wire was received, claimant's testimony that a wire was indeed sent in order to confirm his absence, was beyond question. Further, the project manager confirmed the fact that the supervisor, Mr. Allen, advised him that he knew prior to the starting time on October 17 that Mr. Gossett would be absent due to illness. It is also evident that Gossett had not received or been examined with respect to Carrier's rules prior to his dismissal. In addition, it must be noted that Claimant had no other means of communicating his absence but that which he used. He was not informed of how to reach his supervisor at a motel in the town to which he had been assigned. Based upon the entire record and the evidence indicated and with particular reference to the

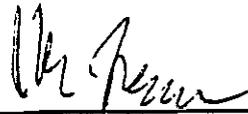
arguments and conclusions above, it is apparent that Carrier has not sustained its position that the evidence warranted discharge in this dispute. Dismissal is a most serious matter and, even though Claimant herein was reinstated after some six months, that six-month commutation of his "sentence" must be based on clear and convincing testimony at minimum. Since that evidence is not apparent in the record being examined by this Board, the conclusion must be that the claim should be sustained.

AWARD

Claim sustained.

ORDER

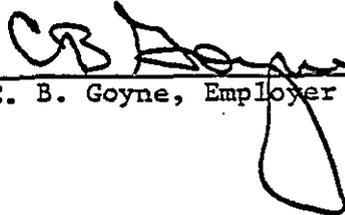
Carrier will comply with the award herein within 30 days from the date hereof.



I. M. Lieberman, Neutral-Chairman



M. A. Christie, Employee Member



C. B. Goyne, Employer Member

Houston, Texas
September , 1983