

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES)
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

"Claim in favor of Mr. L. R. Porting, for all lost wages between the dates of November 17, 1983, and January 17, 1984, resulting from a 60-day suspension, which was assessed without sufficient and just cause." (SSW-D-1131-Porting; 53-711)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The record in this dispute clearly supports Carrier's conclusion that Claimant was guilty of insubordination, and thereby Rule M801, when he refused to perform work as directed by his foreman and when he further voiced disrespectful and derogatory remarks to both the foreman and fellow workers.

The Board is not persuaded that Claimant's conduct may be excused on the basis of a claim that he was provoked into such action or because, as Claimant states, he merely "lost his temper" when the foreman handed him a track lining bar. Nor do we find reason to hold that Claimant not be held accountable for his conduct because there may have existed a question as to whether the work required of Claimant in assisting the gang in getting materials and providing for the repair of a broken rail constituted work which could be required of Claimant within the confines of a light duty restriction under which Claimant had been returned to service following a personal injury.

The Board likewise finds no support for the argument that because Claimant thought he had "re-injured" his back some four hours earlier on the date in question and did not want to go back to the doctor that he had reason to believe it would be all right for him to "just take it easy the rest of the day."

If Claimant believed that he had again injured himself it was incumbent upon him to have reported this injury to his foreman in a timely manner. By having waited some four hours to report this

alleged injury, or until such time as he was given a task to perform which he did not believe could be properly required of him in a light duty work status, the Claimant permits his actions to give rise to serious questions of credibility with respect to the alleged second injury and his testimony regarding the comments of those persons whom he says provoked his insubordinate conduct on the date in question.

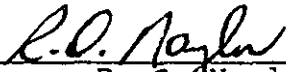
The Board finding no reasonable basis for disturbing the discipline imposed, the claim will be denied.

AWARD:

Claim denied.



Robert E. Peterson, Chairman
and Neutral Member



R. O. Naylor
Carrier Member



M. A. Christie
Organization Member

Houston, TX
February 5, 1986