

AWARD NO. 199

CASE NO. 286

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES)
TO)
DISPUTE)

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

"Claim on behalf of Machine Operator D. G. Chisolm for reinstatement with pay for all time lost, with seniority, vacation and all other benefits restored intact and with dismissal charge removed from his personal record, account his dismissal being unjustified and extremely harsh." (MW-84-13-CB-Chisolm; 53-717)

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.

Claimant, an employee of Carrier for about six years, was dismissed from service on January 27, 1984 for failure to report for work on January 26, 1984, an absence which Carrier maintains represented a continued failure by Claimant to protect his employment in violation of Rule 810. In this latter regard, the record shows that Claimant had been given a written warning relative to unauthorized absences from service on September 29 and 30, 1983, and that he had also accepted without protest a 10-day suspension from service for being absent from work without proper authority on October 19, 1983.

In pertinent part, Rule 810 reads:

"Employees must report for duty at the prescribed time and place,...They must not absent themselves from their employment without proper authority...

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

In defense of the Claimant, the Organization submits that he was "a victim of circumstances as it was absolutely impossible for

him to report for work on January 26, 1984, or notify his supervisor prior to starting time [since there was no telephone at the job site]."

As concerns the reason for Claimant's absence on the date in question, the Organization states:

"On January 26, 1984, Claimant Machine Operator D. G. Chisolm's regular assigned position was Ballast Regulator Operator with headquarters in house trailer at Hubbard, Texas. It is approximately 230 miles round trip from Hubbard, Texas to Claimant's home at Greenville, Texas. Claimant bid on the position of machine operator with Gang 6184 and was assigned this position with headquarters in trailer house. When Claimant reported to the assigned trailer house he found it was not livable. Claimant contacted his foreman and district manager with reference to the condition of the trailer house and was advised by District Manager Ault that he would be allowed actual necessary expenses until the trailer house was repaired. Claimant could not afford to pay for the hotel and meals and wait for the money to be reimbursed due to financial problems he was having, and he so advised District Manager Ault, but he was not advised that the Carrier would advance money for personal expenses. Claimant Machine Operator Chisolm stayed in the hotel to start with but the expenses were more than he could afford. He then proceeded to drive from his home at Greenville, Texas to Hubbard, Texas, approximately 230 miles round trip.

On January 26, 1984, Claimant left his home at Greenville, Texas early in the morning to travel to Hubbard, Texas, the headquarters of the gang. On the way to work the fan belt on his automobile broke and cut a hole in the radiator hose and knocked a hole in the radiator. This incident happened approximately 10 or 15 miles from the nearest town. By the time Claimant was able to get to the nearest telephone his gang had already left for work and the District Manager had left the office. Therefore Claimant could not possibly have received permission to be off work and by the time Claimant was able to get his automobile repaired the gang was off work. Claimant reported to work at the regular assigned

starting time on January 27, 1984 and he advised both Foreman Myhand and District Manager Ault of the car trouble that he had on January 26, 1984. Both Foreman Myhand and District Manager Ault were aware of the condition of Claimant's car and accepted the conversation as being the truth."

There is no question that since the house trailer assigned to Claimant was unfit for habitation, that Claimant had been told by the District Manager that the company would repay him for expenses incurred involving motel accommodations, meals and mileage. It is also unquestioned that the District Manager had not informed Claimant that he could receive an advance on such expenses, and that it took about a month from the date an expense account would be submitted for an employee to be reimbursed for expenses.

The record also shows, as the Organization states, that both the District Manager and the Foreman were aware that Claimant was experiencing problems with his personal automobile.

Testimony of the District Manager and the Foreman also reveals that action had been taken to dismiss Claimant from service prior to their offering Claimant an opportunity, after he had reported for work on January 27, 1984, to explain the reason for this one day absence from work.

We also think it evident from the record that Claimant was aware that if he was not able to contact his foreman relative to an absence from work that he was to then call the District Manager's office in Tyler, Texas. That Claimant would offer as a reason for not having called this office was because he had received a 10-day suspension the last time he did so, does not excuse his failure to have followed prescribed instructions. He should understand, if indeed he does not already, that despite an employee following recognized procedures to timely report an inability to be at work on a particular day, the employee may still be held accountable by the Carrier for an absence from work.

Although the transcript of investigation does not show that Claimant was asked to produce a statement of charges covering repairs to his car, we think it should have been incumbent upon Claimant to have produced such documentation of his own volition so as to have removed any doubt about the time, location, distance to the nearest garage and telephone, and extent of damage to his car that made him a purported victim of circumstance. We

do not mean to infer by this that because an employee is able to show he had transportation problems that this necessarily excuses an absence from work. To the contrary, we believe an employee has the responsible to maintain any personal vehicle used to get to work in proper running order, and that notwithstanding an automotive breakdown the employee remains obliged to contact the Carrier to report an absence from duty, even if the first opportunity to do so falls beyond the established starting time for the employee's job. However, we do believe there are instances when emergency or unforeseen circumstances may well dictate sufficient reason to hold an employee somewhat less accountable for an automotive breakdown or an inability to contact the Carrier.

In the circumstances of record, while mitigating circumstances may have contributed to Claimant's absence from work on the date in question, we think it must be held that he had not taken all appropriate action to properly and timely notify the Carrier as to the reasons that dictated he be absent from work.

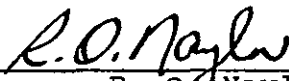
Turning now to the question of proper assessment of discipline. As this Board stated following its hearing on the dispute and in directing that Claimant be immediately reinstated to service with seniority and other benefits unimpaired, the penalty of dismissal from service was harsh and unreasonable. In our opinion, a disciplinary suspension of 30 calendar days would have been proper in keeping with the circumstances of record and the dictates of progressive discipline. Therefore, in addition to previously awarded reinstatement to service, the Board will hold Claimant be compensated for all time lost beyond 30 calendar days from the date he was removed from service to the date he was returned to service following the Board's earlier decision with respect to that particular portion of the claim.

AWARD:

Claim disposed of as set forth in the above Findings.



Robert E. Peterson, Chairman
and Neutral Member



R. O. Naylor
Carrier Member



M. A. Christie
Organization Member

Houston, TX
February 5, 1986