

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES)
TO)
DISPUTE)

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

STATEMENT OF CLAIM:

"Claim in favor of Mr. S. J. Sanders, for all lost wages resulting from a 90-day suspension following a hearing conducted on June 6, 1984." (SSW-D-1153; 53-748)

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 was disciplined for allegedly having reported for work an hour or more late on April 16, 1984, and then offering what Carrier said was a lie or fabricated reason for being tardy.

Although discipline as administered was a 90-day suspension, the Claimant had first been discharged from all service on the basis of what Carrier submits was its initial concern with respect to the manner Claimant had explained his lateness in reporting for work on the date in question. In this connection, the Carrier directs attention to testimony of its District Manager at a hearing requested by Claimant in pursuance of Article 14 of the current Rules Agreement, whereby he stated:

"On Monday morning, April 16, [Claimant] Sherman [Sanders] came into my office about 10 or 15 minutes after 8, I was on the phone, soon as I got off the phone, I asked Sherman how come he was late for work. He told me that he had been stopped by the police dept. in Tyrone, Okla. and had been held there by the police for more than 1-1/2 hours on account of his drivers license being expired. I then talked to Sherman about being late for work and I told him I was going to call the police dept. in Tyrone and find out if this story was true. After I got the information and got the number for the Tyrone police dept. and started dialing the number for the police dept., then Sherman spoke up and told me that he was lying to me, that he was not stopped by [the] Tyrone police

dept., he really didn't have no excuse for being late, he told me. So then I told Sherman if he had not have lied to me we might have worked something out, but I told him to go home and that he would receive a letter in the mail on the type of action that would be taken. That's it." (Under-scoring by this Board.)

At the company hearing Claimant asserted that Carrier's District Manager "didn't get the whole story." In this regard, Claimant proceeded to testify as follows:

"When I was stopped by the police I had [an] expired drivers license, the officer told me to pull my car over, call someone to come drive me the rest of the way, so we sat there bout (sic) an hour and a half [and then] he went after another vehicle, I let him get down the road and I put the pedal to the metal and came to work. I stopped, called [District Manager] Danny Brown at the office number, they were both busy so I called his home. I spoke with his wife, she said she would relay the message to Danny. I also have the telephone bill, it states that what I said is true. The reason I didn't want Danny Brown to call the police was because the policeman had instructed me to park my car, I didn't do that and I didn't want him wondering where I was or how I got there and start a bunch of trouble in that small town."

In further testimony the Claimant stated he had dropped off a friend's daughter in Dalhart, Texas at 7:50 A.M. while enroute to work; he had arrived at his job site or assigned duty point in Dalhart Texas at 7:55 A.M.; he "had assumed duty at 8 o'clock"; he spoke with the District Manager when the latter got off the telephone at 8:20 A.M.; and, he challenged testimony of the District Manager and the Welder he was assigned to work with that he had not reported for work until 8:10 or 8:15 A.M. Furthermore, and contrary to testimony offered by the Welder that he had personally told Claimant twice on Friday, April 13, 1984, that their assigned starting time on Monday, April 16, 1984, had been moved up from 8:00 A.M. to 7:00 A.M., Claimant maintained that he had not been given such information, and that it was his understanding the assigned starting time was 8:00 A.M., and not 7:00 A.M. as maintained by the Carrier.

The company hearing was held on two separate dates, i.e., May 31,

1984 and June 6, 1984. It had been recessed and reconvened for the Carrier to call an additional witness and, according to the hearing officer, to permit Claimant opportunity to introduce copy of his telephone bill to show a telephone call had been made to the District Manager's home on the date in question. In this latter regard, although the District Manager had testified that he had no knowledge of Claimant having called his home while he was at work, Claimant proceeded to place on the record the following statement immediately before the hearing was recessed:

"There's no need to postpone it for me to produce the phone bill because as [District Manager] Danny Brown and I were discussing the situation his wife called to tell him that I had called her and she was delivering the message I had given her earlier. And Mr. Brown stated when he was talking to her that I'm with Mr. Sanders right now."

At the reconvened hearing, Claimant produced his monthly statement from Southwestern Bell Telephone. It reveals a telephone call had been made from Claimant's telephone number to the District Manager's residence at 6:44 A.M. on April 16, 1984.

In connection with his earlier testimony relative to having been stopped by a police officer, Claimant had introduced Oklahoma Uniform Violations Complaint No. 22182. It shows Claimant had been issued the complaint "on or about 4/16/84 at 6:00 A.M." for a "speeding" offense by traveling 51 mph in a 45 mph zone as indicated on radar. Also written on the complaint are the words: "(Expired License)", "(Speeding)", and "Warning".

When the hearing reconvened, Claimant was asked to clarify for the record certain time elements previously brought out during the first day of hearing. In this connection, Claimant gave the following explanation relative to the above police complaint:

"When the officer first stopped me, I was trying to talk him out of a ticket so we just sat in his car and talked for what seemed to be about a hour to an hour and a half. Just before, approx (sic) 10 minutes before, he went after another vehicle, he was persuaded to write the warning ticket."

In response to a question, Claimant said he had been stopped by the police officer "prior to 6 a.m." He also asserted that since it was approximately 9 or 10 miles between Tyrone and Hooker (his

residence), he left the place or location where he had been stopped by the police officer at approximately 6:30 A.M. to return home, where he first attempted to call Carrier's Dalhart offices, but, finding the lines busy, then placed a call to the District Manager's residence at 6:44 A.M.

The record also shows Claimant had responded "Yes" to the following question asked of him at the reconvened hearing:

"Mr. Sanders, you left Hooker, Okla (sic), at approx (sic) 6:44 am, drove 90 miles to Dalhart, Tx., delivered a young person to a day care center and arrived at work at 7:55 am. Is this correct."

As concerned the location of the day care center where he had dropped off the friend's daughter, Claimant said it was a few blocks from the depot at Dalhart.

After giving studied consideration to the record, the Board is persuaded that the Carrier had substantial reason to hold that Claimant had "fabricated an elaborate story" as an excuse for his lateness in reporting for work, and it did therefore have reason to question Claimant's credibility with respect to his conduct on April 16, 1984.

As concerns the starting time for Claimant's assignment on the date in question, we find no reason to hold other than that it was established by the record to have been 7:00 A.M., and that Claimant had in fact not reported on time. We likewise believe that by his own actions the Claimant showed he was aware that he was late for work. In this respect, we think he demonstrated this belief when he went to office upon his arrival at work to offer an explanation to the District Manager without being called to such office. We also think it apparent there would have been no reason for hurried telephone calls at 6:44 A.M. to the Carrier's offices or the District Manager's home if the Claimant believed his starting time was 8:00 A.M. rather than 7:00 A.M.

As concerns the complaint or ticket issued by the police officer. We fail to comprehend from reading copy of this ticket as attached to the transcript of hearing, the Claimant maintaining that it is merely a "warning" ticket, since the bottom portion of the ticket, albeit the copy is not completely legible, shows that the police officer had listed a court appearance date, and that data in this regard was followed by Claimant's signature promising "to appear in said court at said time & place."

In this same connection, we believe it stretches the bounds of credulity for Claimant to assert that he was stopped "prior to 6:00 A.M." and had talked with the police officer for about one hour and thirty minutes before the officer issued the ticket. This implies he had been stopped by the officer at about 4:30 A.M., whereas the complaint shows it was for a violation at 6:00 A.M. We likewise question Claimant stating on the one hand that as soon as the police officer had left, or got "down the road," he "put the pedal to the metal" and "came to work," and on the other hand, offering testimony that the officer had issued the ticket at about 5:50 A.M. and he (Claimant) left the place where he had been stopped by the officer to return home at about 6:44 A.M. to call the District Manager.

Finally, as did the Carrier, we find it extremely difficult to accept the argument that after making the telephone call to the District Manager's residence at 6:44 A.M. that Claimant sped to work at a speed which would have had to average over 80 mph, especially in the light of Claimant having just received a ticket for going but 51 mph in a 45 mph zone.


Since it is clearly evident from studied review of the transcript of investigation that Claimant was guilty of being late for work and offering a series of false statements relative to the reason for being tardy, and that such fabrication continued both to the formal company hearing and to this Board, we find no reason to hold that the Carrier did not have sufficient just cause for imposing its disciplinary penalty, particularly when viewed in the light of Claimant's past record showing five separate violations of the same rule. Accordingly, the claim will be denied.

AWARD:

Claim denied.


Robert E. Peterson, Chairman
and Neutral Member


R. O. Naylor


M. A. Christie

Houston, TX
February 5, 1986