AWARD NO. 219
CASE NO. 306

SPECIAL BOARD OF ADJUSTMENT NO. 280

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

AWARD

STATEMENT OF CLAIM:

"1. Carrier violated the effective Agreement when Track Laborer Raymond Mobley was unjustly dismissed from service on February 4, 1986.

2. Claimant Mobley shall now be reinstated and paid for all time lost commencing February 4, 1986, and on a continuing basis and with seniority, vacation, and all other benefits restored intact." (MW-86-27-CB Mobley; 53-919)

OPINION OF BOARD:

Claimant held the position of Track Laborer with a service date of April 20, 1981. By letter dated February 4, 1986, Claimant was dismissed from service for failing to comply with the terms of a prior reinstatement letter. Claimant requested a hearing which was held on April 23, 1986. By letter dated April 28, 1986, the dismissal was upheld.

By letter dated October 28, 1985 and signed by Claimant on November 1, 1985, and by terms reiterated in a letter from the Carrier dated December 10, 1985, Claimant agreed to the following conditions "to remain in effect for one year":

1. Mr. Mobley will meet once monthly with Employee Assistance Counselor Karen Neal.

2. Mr. Mobley will comply with any program specified for him by Employee Assistance Counselor Karen Neal.

3. Mr. Mobley will work on a regular basis unless complying with a program specified by Employee Assistance Counselor

Karen Neal, absent for illness, or other justifiable cause.

4. Mr. Mobley will satisfactorily pass physical examinations, including drug and alcohol screen as directed by Employee Assistance Counselor Karen Neal.

The agreement further provided that "[f]ailure to comply with the conditions as set forth above, except for circumstances judged by Employee Assistance Counselor Karen Neal to be extenuating, will result in [Claimant's] being removed from service of this Company without recourse." Claimant's program established as a result of the above agreement required his attendance at aftercare meetings at Charter Forrest Hospital and two or more Alcoholics Anonymous meetings per week. Notwithstanding the commitments made by Claimant, Employee Assistance Counselor Neal advised the Carrier that Claimant failed to comply with the terms of the program. Progress reports from Neal and a coordinator at Charter Forrest hospital dated January 22 and 27, 1986, respectively, show that Claimant failed to attend aftercare meetings subsequent to November 27, 1985 and further show no record of Claimant's attending AA meetings.

We are satisfied that substantial evidence exists in the record to support the Carrier's conclusion that Claimant failed to comply with the specified terms of the conditions set forth in the October 28, 1985 agreement. Claimant asserts that his absences from the aftercare program were justifiable in light of his involvement in an automobile accident. Claimant further asserts that he attended AA meetings and had records to support his assertion. However, according to Claimant, those records were destroyed in the automobile accident. Notwithstanding Claimant's assertions, the record shows that the automobile accident was on December 21, 1985, but Claimant's non-attendance at aftercare meetings commenced on November 27, 1985. Further, the record indicates that Claimant was able to go to his doctor's office on a daily basis for treatment, yet, Claimant did not continue his treatment under the terms of the October 28, 1985 agreement. Moreover, Claimant's assertion that he did not have adequate transportation to get him to the required meetings is no reason to change the result in this case. The agreement required Claimant to

attend the meetings. It did not require attendance only if Claimant had transportation. In any event, despite all the reasons offered by Claimant for non-compliance, the October 28, 1985 agreement specifies that extenuating circumstances are to be judged by Employee Assistance Counselor Neal. Neal has not determined Claimant's excuses to be extenuating. In light of the authority given to Neal in this regard, we are in no position to determine otherwise. Under the circumstances, we find no basis to disturb the Carrier's rejection of those excuses. Under the terms of that agreement, Claimant's failure to comply with the specified conditions permitted his removal from service. The Carrier's action falls within its prerogative under the terms of that agreement.

The Organization has raised several other arguments that we must reject. First, the issue of whether Claimant had a right to a hearing under the terms of the October 28, 1985 agreement which provides that Claimant's failure to comply with the agreement "will result in [Claimant's] being removed from service of this Company without recourse" and whether Claimant relinquished his right to a hearing under Article 14 of the Agreement between the Carrier and the Organization and the propriety of Claimant having to ask for a hearing is moot since Claimant was ultimately afforded a hearing. Second, the Organization questions the specificity of the allegations against Claimant. In light of the terms of the October 28, 1985 agreement, we find the charges sufficiently specific so as to place Claimant on notice of the allegations against him and to permit Claimant the ability to adequately prepare his defense to those allegations. The fact that Rule 607 was mentioned in the February 26, 1986 notice of hearing does not change the result. Our reading of that letter satisfies us that Claimant was clearly being notified that the hearing would focus upon his failure to comply with the terms of the October 28, 1985 agreement. Third, Division Engineer D. T. Wickersham's inclusion of the fact in the December 10, 1985 letter to Claimant that Claimant was being placed in a furloughed status does not amount to a unilateral change of the terms of the October 28, 1985 agreement. The furloughed status was dictated by a recent force reduction and was independent of the terms of the agreement.

We view the statement simply as notification to Claimant of his then current status in accord with Wickersham's statements in the December 10, 1985 letter that Claimant completed the first part of Employee Assistance Counselor Neal's program thereby making Claimant eligible to return to service. Such notification is not a change in the terms of the October 28, 1985 agreement. At the time of Claimant's eligibility to return to service, all he was eligible for was to be placed in a furloughed status. Nothing can be found in the agreement that changes Claimant's seniority vis-a-vis other employees to give Claimant greater (or lesser) rights for furlough purposes. However, we do view the terms of the October 28, 1985 agreement as still applicable to Claimant notwithstanding his furloughed status. Because an employee is in a furloughed, inactive, or withheld from service status does not completely insulate him from disciplinary action. He remains an employee of the Carrier subject to its rules. Third Division Award 26390 and awards cited therein. Nothing in the agreement can be found to excuse Claimant from complying with its terms because he was in a furloughed status.

In sum, the record shows that Claimant did not comply with commitments and conditions contained in the October 28, 1985 agreement. We find no basis to disturb the dismissal.

AWARD:

Claim denied.

Edwin H. Benn, Chairman
and Neutral Member

R. O. Naylor
Carrier Member

S. A. Hammons, Jr.
Organization Member

Tyler, Texas
September 14, 1987