

SPECIAL BOARD OF ADJUSTMENT NO. 280

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

STATEMENT OF CLAIM

1. The Carrier violated the effective Agreement when Machine Operator J. J. Mickens was unjustly suspended from service (System File MW-87-55-CB/465-64-A).
2. Claimant Mickens shall now be paid for all time lost commencing July 23, 1987, through August 19, 1987, with mileage of \$.23 per mile for 422 miles and charge letter of July 28, 1987, removed from his personal record.

OPINION OF BOARD

As a result of an accident on the main line in the vicinity of Latimer, Kansas on July 23, 1987 Claimant, a machine operator, was withheld from service pending investigation after his spike driver struck a hot box detector. By letter dated July 28, 1987 Claimant was charged with safety rule violations. The investigation was eventually held on September 9, 1987. However, Claimant was returned to service on August 19, 1987. By letter dated September 16, 1987, Claimant was found in violation of Rules 607, A, I and 1041 and the time withheld from service was considered as a suspension.

The threshold question in this case is whether the Carrier properly withheld Claimant from service after his spike driver struck the hot box detector. Not all incidents leading to potential discipline automatically justify withholding an employee from service. Had the parties intended such a result, one would expect to see language to that effect in the Agreement. Instead, Rule 14(a) permits the Carrier to withhold an employee from service pending investigation only "in *serious* cases". [Emphasis added]. The main focus of the cause of the damage to the hot box detector (approximately \$8000) in this matter concerned whether or not Claimant properly inserted safety pins on his machinery (as the Carrier's

subsequent investigation concluded) or whether the pins were properly inserted by Claimant but the machine experienced problems with gauge clamp assemblies dropping and the possibility that the hot box detector was in a higher position than normal due to being disturbed by ongoing work (as the Organization contended). No other allegations of misconduct by Claimant were present. No history of other safety related problems by Claimant was evident. The question here, then, is whether or not the record establishes that the incident involved in this matter was "serious" within the meaning of Rule 14(a)(1). We find that it was not.

As it is used in Rule 14(a)(1), "serious" is not defined. The problem is that where no guidance exists in the Agreement or in practice, what is "serious" to one person may not be "serious" to another. The wisdom of not strictly defining the term gives the Agreement flexibility and gives the Carrier the ability to address a myriad of situations and apply the terms of the Agreement as necessary. However, that built in flexibility found in Rule 14(a)(1) places a corresponding burden upon the Carrier's supervisors and officials to utilize the authority in a fair manner and not to withhold employees from service in every situation where discipline may be warranted.

Under basic rules of contract construction, the lack of an agreed upon definition for a word; the lack of evidence of bargaining history concerning what the parties intended a word to mean; and the similar lack of evidence of a practice concerning how a word is defined requires that the ordinary every day usage of the word be used. Words that are synonymous with "serious" and which can provide a guide for determining whether or not to withhold an employee from service under Rule 14(a)(1) are, for example, "severe", "grave", "dire", "dangerous", "harmful", "unsafe" or "hazardous".

Thus, given the ordinary meaning of the word "serious", no one would argue that in the appropriate situation an employee involved in conduct demonstrating gross insubordination, theft, or activity in violation of Rule G is involved in a "serious case" and could be withheld from service pending investigation under Rule 14(a)(1).

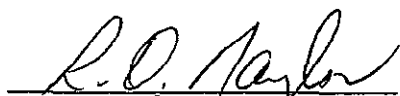
Similarly, facts showing that an employee is not performing his duties in a safe manner could be considered as "serious" within the meaning of the rule. However, in the safety case, the question of whether the conduct is "serious" is one of degree. Here, there was a bona fide dispute concerning whether or not Claimant properly inserted the safety pins. No other misconduct was evident and no pattern of similar past conduct existed. Because of the lack of a rigid definition of the word "serious", the areas of distinction become gray. Given the nature of the dispute concerning the lack of clear evidence at the time that Claimant had, in fact, clearly failed to properly insert the safety pins and further given the lack of an indication that if permitted to continue to work pending the outcome of the investigation Claimant may have engaged in similar misconduct or otherwise acted in a manner so as to endanger himself, others, or the Carrier's property, we cannot say that Claimant's alleged misconduct was "serious" within the meaning of Rule 14(a)(1) so as to justify his being withheld from service pending the outcome of an investigation.

In light of the above and further considering that Claimant was returned to service on August 19, 1987, it is unnecessary to address the merits of this case. We find that Claimant was improperly withheld from service and shall sustain the claim.

AWARD

Claimant was improperly withheld from service inasmuch as the incident involved was not "serious" within the meaning of Rule 14(a)(1). Claimant shall be compensated for time lost.


Edwin H. Benn
Neutral Member


R. O. Naylor
Carrier Member


S. A. Hammons, Jr.
Organization Member

Houston, Texas
June 11, 1990