

C O P Y

AWARD NO. 7  
CASE NO. 15

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES     )  
          TO     )  
DISPUTE     )   The Brotherhood of Maintenance of Way Employes  
                  St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

"Dispute concerning Extra Gang Laborer Henry Robinson not being allowed to return to work, having been found physically able to perform duties."

FINDINGS: The Employees state that on or about November 17, 1958, the claimant was dismissed from service by his foreman, T. H. Leach, due to his alleged physical inability to perform his work as an Extra Gang Laborer; that the claimant was forced to sign a request for time check and to report at the Division Engineer's office at Tyler, Texas; that when the claimant reported to the Division Engineer's office, he was instructed to report to the Carrier's Hospital at Texarkana for a physical examination.

The claimant reported to the hospital on November 19th and was examined by Dr. Hibbitts, Chief Surgeon, and was found to be physically fit. The Carrier was so notified by Dr. Hibbitts.

The Employees further state that following the claimant's release from the hospital on or about November 24, 1958, he went to Pine Bluff due to the serious illness of his sister, but that he wired Division Engineer Leguenec of the circumstances and stated he would report to work as soon as his sister's condition improved.

On December 2, 1958, claimant again reported to the Carrier's Hospital at Texarkana for another physical checkup and was discharged from the hospital on December 5, 1958, after he was again found physically qualified to return to duty; that the claimant reported to work on December 8, 1958, and was then informed that he had been discharged on November 15, 1958.

The General Chairman of the Maintenance of Way Employes wrote a letter to the Carrier on December 9, 1958, requesting that the claimant be returned to work or that he be given a hearing as per Rules 6-1 and 6-2 of the effective Agreement.

The Carrier states that the claimant was dismissed from service on November 15, 1958, for carelessness and that he signed a request for time check to secure his pay and that this request showed the reason for the foremen requesting the time check for the claimant, "Rule 110, Book Rules."

The Carrier states that Rule 110, reads as follows:

"110. Carelessness--Employees who are habitually careless of the safety of themselves or others will not be continued in the service."

The Carrier admits that the claimant entered the Carrier's Hospital and remained in the hospital until November 22, 1958, and that the Carrier's Doctor Hibbitts advised the Carrier by telegram on November 24th, and by letter of November 26th, that he found no physical defect that would disqualify the claimant for service.

The Carrier admits that the claimant reported to work again on December 8, 1958, and that he was told by Division Engineer Leguenec that he had been dismissed from service on November 15, 1958.

The Carrier states that the claimant failed to comply with Rule 6-2 of the effective Agreement when he was dismissed from service on November 15, 1958, which states that an employee who is disciplined or feels unjustly treated shall, upon making a written request to his immediate superior within ten (10) days from the date of the advice of discipline, be given a fair and impartial hearing within ten (10) days thereafter.

The Board finds from the evidence produced at the hearing that there is a conflict in the testimony as to the reason that the claimant was dismissed from service. A letter dated Tyler, Texas, November 17, 1958, signed by J. R. Leguenec, addressed to Dr. Hibbitts, reads as follows:

"Dr. Wm. Hibbitts:

"Extra Gang Laborer H. Robinson was in my office this morning and advised that he will report to Company Hospital within next few days for examination.

"As a matter of information, Extra Gang Foreman T. H. Leach and Roadmaster H. G. Russell advise that this laborer is not physically able to perform the duties required of him as an Extra Gang Laborer; and I will appreciate your advising me result of examination when this employee reports to Hospital.

(s) J. R. Leguenec"

This letter would indicate that Foreman T. H. Leach stated at that time that the reason the claimant was taken out of service was due to a physical disability and that is the reason that he was sent to the Carrier's Hospital by the Division Engineer's office for a physical examination. Who sent the claimant to the Carrier's Hospital for the second physical examination, or why he was sent is not made clear by the exhibits offered or by the evidence.

A statement signed by the Carrier's Foreman T. H. Leach on February 2, 1959, states that while the claimant was working with the gang taking out tracks

at the Blue Bonnett area, there was some rail that had been rushed off of track and some of this rail was in the way and had to be moved. That there was also some small scrap, spikes and bolts among the rail and that he told his men to remove the small scrap and then get the rail tongs and move the rail. That some of the men began to move the scrap and others began picking up the tongs. That the claimant took a lining bar and started to move the rail while the men were moving the scrap and that the foreman told the claimant not to move the rail, but that the claimant did anyway and that one of the men in the gang barely missed getting his foot caught by the rail that the claimant moved; that again at Waco, some of the men in the gang requested that the claimant get out of the way when they were handling rail as they were afraid he would cause someone to get hurt; that he was in the way when they were loading rail and boards. That the foreman dismissed him because he would sooner or later cause someone to get hurt.

The foreman also states that the claimant was not strong enough to do the heavy work that is required of an Extra Gang Laborer and that he was told this on November 15, 1958.

This exhibit would indicate that the claimant was guilty of insubordination and was also not physically able to perform his work.

The Board further finds from examination of the exhibits entitled "Request for Time Check" that the reason given by Foreman Leach in signing the request for time check is "Rule 110, Book Rules." The request for time check does not state that the claimant had been dismissed from service, and from the statement given by Leach on February 2, 1959, and the letter written by the Division Engineer's office on November 17, 1958, it would seem that the claimant had been taken out of service due to a physical disability.

The Board further finds that due to the fact that this claimant had been an employee of the Carrier for over 30 years; that the carrier did not bring out in its evidence that the claimant was guilty of habitual carelessness during the time of his employment; that the claimant was under the impression that the reason that he was taken out of service on November 15, 1958, was due to a physical disability; that he reported to the Carrier's doctor on two occasions and was found to be physically able to report to work; that due to the conflict in the evidence submitted by the Carrier and the employees, this claimant should be returned to his former position as Extra Gang Laborer with all seniority and vacation rights unimpaired without compensation.

The Board further finds that the claimant complied with Rule 6-2 of the effective Agreement.

AWARD: Claim sustained in accordance with the Opinion.

(s) Thomas C. Begley  
Thomas C. Begley, Chairman

(s) A. J. Cunningham  
A. J. Cunningham, Employee Member

(s) M. L. Erwin  
M. L. Erwin, Carrier Member

Tyler, Texas  
September 30, 1959