

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - K. R. Kemp
Award No. 116
Case No. 116

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

That the Carrier's decision to suspend Claimant for a period of ten (10) days was excessive, unduly harsh and in abuse of discretion and in violation of the terms and provisions of the current Collective Bargaining Agreement.

That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to reinstate and compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Special Board of Adjustment is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

By letter dated November 26, 1990, the Carrier advised the Claimant to be present at a formal hearing to be held on Friday,

November 30, 1990 to determine if he was guilty of being absent without proper authority from November 1, 1990 through November 20, 1990. This would constitute a violation of Rule 604 of the Rules and Instructions for the Maintenance of Way and Structures and Engineering Department employees, Southern Pacific Transportation Company. The applicable portion of Rule 604 reads as follows:

Rule 604: DUTY-REPORTING OR ABSENCE:

Employees must report for duty at the designated time and place. They must devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties, or substitute others in their place without proper authority.

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

After reviewing the evidence adduced at the hearing the Carrier suspended the Claimant for ten (10) days.

The Claimant who was working pulling spikes on November 1, 1990, left work early. He did not speak directly with his Foreman, but left word with two fellow employees. The next day, he allegedly went to the hospital emergency room to be treated for muscle spasms. He arranged to have a friend call in to report his absence. This same friend also called the following Monday, to report him off duty. When the Roadmaster asked to speak to the Claimant, he was told he was in bed asleep. The Roadmaster did not hear from the Claimant again until November 21, 1990 when he reported to work and provided a telephone

prescription as evidence of the reason for his absence.

The Claimant contends he attempted to contact the Roadmaster several times between November 2, 1990 and November 21, 1990, but was unsuccessful. He also claims that he was under doctor's care the entire time and was unable to come to work because of medication. He believes he did everything necessary to protect his employment.

The Carrier believes the Employee was negligent in protecting his employment. First, he left work without obtaining the permission or even telling the Supervisor in charge. Secondly, he failed to contact either his Supervisor or the Roadmaster at any time after November 2, 1990. Finally, he did not provide valid written documentation of his illness or his doctor's medical opinion until well after he was notified of the investigation. Even then the information provided was not complete.

Employees are well aware of their obligations to provide their employers with adequate evidence of prolonged illnesses. In the Claimant's case, he contends he was under doctor's care for muscle spasms prior to the day he left work early, which was November 1, 1990. That being the case, there was no reason he could not provide the Carrier with written notice from his doctor that he was required to take medication which could affect his ability to work. In fact, the Rules and Regulations require an employee to provide such information. The Claimant said he told a Supervisor about the medication and admitted that the Supervisor explained to him the necessity of providing a

doctor's note relative to the kind of medication the Claimant was taking. Despite hearing this from a Supervisor, the Claimant never provided this documentation.

Regardless, if the Employee was truly interested in protecting his employment, common sense would have dictated the need to bring in substantial verification that he was under a doctor's care from November 1, 1990 until November 20, 1990. Included in this documentation would have to be a statement saying the Claimant was unable to come to work.

In considering all of these things, the Board finds the Claimant failed to take the necessary steps to protect his employment with the Company. Frankly, we do not find the Claimant's explanation of his illness between November 1, 1990 and November 20, 1990 to be very credible. This along with the Claimant's lack of employment history, due to his short tenure, gives cause to uphold the actions of the Carrier in this case.

AWARD

The claim is denied.



Carol J. Zamperini
Impartial Arbitrator

Submitted:

September 18, 1991
Denver, Colorado