

SPECIAL ADJUSTMENT BOARD NO. 947

Award No.6
Case No. 6

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company (Western
Lines)

STATEMENT
OF CLAIM

1. That the Carrier violated the provisions of the Agreement when, on April 13, 1983, it terminated Track Laborer, David Edward Lakey, without first providing him with an opportunity to tell his side of the story at an impartial hearing, and thereafter, following a formal hearing, the Company notified Mr. Lakey, by letter dated, June 28, 1983, that he was instead suspended for thirty (30) calendar days, commencing April 13, 1983 through and including May 12, 1983, for alleged violation of Rule 810 of the Rules and Regulations of the Maintenance of Way and Structures, the Company having defaulted on this matter when they failed to provide the Grievant with the impartial hearing before taking disciplinary action, in addition, such action by the Company was unjustified due to the fact, Mr. Lakey was off on injury the days he is charged with being absent without authority.
2. That Mr. Lakey be compensated for all time lost and his record be expunged.

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 the arbitrator being sole signatory.

David Edward Lakey, was employed in 1973 as a laborer for the Southern Pacific Transportation Company. His employment record is clean prior to his suspension on April 13, 1983. However, exhibits introduced at the hearing reveal heavy absenteeism on Mr. Lackey's part from January, 1983 through the time of his suspension. Although not indicated on his employment record, the Grievant was warned in writing on five different occasions that his absenteeism was unacceptable. Sometime after his last warning, he became incapacitated with an injured toe. During this time he was seeing a Dr. Ballard, a Dr. Cox, and a Dr. Sander. On April 11, 1983 Dr. Cox released the Grievant for return to full duty. "Marcie", a nurse for Southern Pacific notified Mr. Lackey by phone that he had been released. On April 11, 1983, Mr. Lackey called, Mr. Keen's clerk, Andy, and told him he had a doctor's appointment on April 14, and would call after then to tell them when he would report to work. On April 13, 1983 the Company sent Mr. Lackey a termination notice. On April 15, Mr. Lackey reported to his Foreman, Mr. A. W. Seaholm who advised him he was terminated from service. He also received his registered letter of termination on April 15, 1983. After receiving the letter, he contacted his Union Representative, Mr. C. F. Foose, General Chairman of the Brotherhood of Maintenance of Way Employees. Mr. Foose by letter dated April 25, 1983, requested a hearing on the charges against Mr. Lackey. A hearing was held on May 11, 1983. After gathering evidence at that hearing, the Company suspended Mr.

Lackey for thirty (30) calendar days effective April 13, 1983.

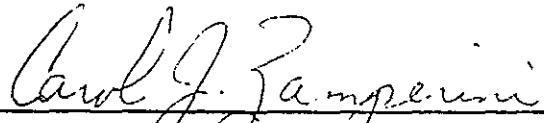
If Mr. Lackey had had no absentee problems prior to this instance, he would certainly deserve the benefit of a doubt. However, that isn't the case. The nurse, who notified Dr. Root she had called Mr. Lackey to inform him of his release to full duty, had no reason to fabricate a story. Once notified, especially considering his previous warnings regarding absenteeism, Mr. Lackey had an obligation to report to duty or at least to seek authority to miss work in order to see a specialist. He did neither. The Company was justified in suspending Mr. Lackey for violation of Rule 810, due to not reporting to work when he was released by the doctor for full duty.

General Chairman, C. F. Foose, raised a legitimate complaint concerning the Company's termination of the Grievant without first offering him a hearing. Rule 45 states: "Employees in the service sixty (60) calendar days or more shall not be disciplined nor dismissed without first being given a fair and impartial hearing before an officer of the Company. . . . (emphasis added) This contractual requirement is not negated by Appendix "R", but rather supported by it with language such as: "In connection with the application of Rule 45". . . .and ". . . ."that he be given an investigation under Rule 45 of the current agreement." Therefore it is clear the Company, had they not modified their actions against Mr. Lackey after an investigation would have

certainly been in violation of the contract and would have defaulted. In this case, however, despite the letter of termination, the time spent out of service by Mr. Lackey was nothing more than time out of service, not much different than the out of service time given other grievants whose grievances have been reviewed by this Board. Considering Mr. Lackey's attendance record and because I do not feel Mr. Lackey's position was jeopardized by the Company's mistake, I believe the penalty should stand.

AWARD

Claim denied.



Carol J. Zamperini, Neutral

Denver, Colorado
June 21, 1984