

SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - Dennis Wesley
Award No. 91
Case No. 91

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

That the Carrier's decision to dismiss Claimant, Dennis Wesley from its service 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 Employes 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.

The instant case stems from the Claimant's discharge which was effective September 10, 1987, his subsequent conditional reinstatement on August 15, 1988 and his current dismissal

notice contained in a letter dated September 29, 1988. The latest dismissal resulted from a failed urinalysis test which was part of the Carrier directed reinstatement physical examination.

The Claimant was first employed on April 6, 1981. He was furloughed later in the year and reemployed on July 25, 1983. From June, 1985 until his initial dismissal on September 9, 1987, he was counseled on numerous occasions for absenteeism. During this period he was suspended twice and issued thirty demerits, all for absence without authority. On September 10, 1987, the Carrier sent a certified letter to the Claimant indicating that he had been absent without proper authority since August 7, 1987 and was therefore terminated. The letter went on to inform the Claimant of his right to request a hearing under Rule 45 of the Agreement. The Claimant requested a formal investigation which was granted by letter dated December 1, 1987. The letter set the hearing for December 21, 1987 at the office of the Division Engineer, Tucson, Arizona. The purpose of the hearing was to establish the Claimant's responsibility, if any, in violating Rule 604, of the Rules & Regulations for the Government of Maintenance of Way and Structures & Engineering Department Employees of the Southern Pacific Transportation Company, those parts which read:

Rule 604: DUTY REPORTING OR ABSENCE:
Employees must report for duty at the designated time and place. They must not absent themselves from duty without proper authority.

Continued failure by employe to protect their employment shall be sufficient cause

for dismissal.

The evidence presented at the hearing did not alter the Carrier's position that the Employee failed to protect his position and the September 10, 1987 dismissal was reaffirmed. However, because the Claimant contended his absenteeism was due to his alcohol addiction, the conducting officer agreed to consider any recommendations made by the Employee Assistance Counselor. And if the Claimant's problems were related to his alcohol addiction, he would be offered a conditional reinstatement, if recommended by the counselor.

The Union subsequently requested the Claimant's reinstatement with seniority rights intact following the completion of his treatment for alcoholism. The matter was later appealed to Mr. Harvy Moles (July 6, 1988) and eventually to Mr. Moles successor, Mr. R. J. Stuart (August 12, 1988). On August 15, 1988, an agreement was reached whereby the Claimant would be returned to duty on a conditional basis. The conditions associated with his reinstatement included: total abstinence from alcohol and other drugs, random unannounced alcohol/drug testing, participation in a rehabilitation program, a Company-directed medical examination and a two year probation. A violation of any of these conditions would result in a return to dismissed status.

As part of the Company-directed medical examination, a urinalysis was completed. The results showed the Claimant tested positive for alcohol at a level of .17. He was returned to dismissed status.

During his hearing on December 21, 1987, the Claimant admitted to problems with alcohol, but testified that he had those problems under control. He attributed his alcoholism to personal problems which had started the previous summer. However, a review of the Employes record shows that his problems began long before 1987. In fact, his absenteeism started in 1985. He was given numerous letters of warning relative to Rule M810, regarding his absence without proper authority and his failure to protect his employment. These warnings continued into 1986 and during that year the Claimant signed at least three waivers for the same rule violation.

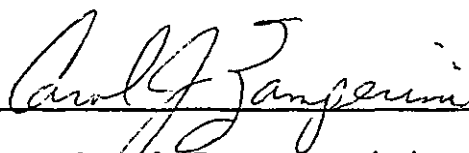
This Board appreciates the unfortunate circumstances in which the Claimant finds himself. However, there is every indication that the Carrier has attempted to assist the Employee in retaining his employment. They have been extremely flexible in giving the Employee letters of counsel without additional penalty, they have allowed him to sign waivers, they have tried demerits and suspensions. And they finally agreed to a conditional reinstatement. None of these things worked. Before an employe can be helped, he must want to be helped and he must make a sincere effort. When the Claimant reported for his physical and his urine showed positive for alcohol at a level of .17, it demonstrated an unwillingness on his part to make an honest effort to turn his situation around. The Carrier cannot be held accountable for the Employee's failure to uphold his end of the bargain.

The Claimant was given many opportunities to correct his

behavior, but there was no concrete evidence that he made a serious effort. He was afforded a full and fair hearing. The Carrier was justified in terminating the Claimant.

AWARD

The claim is denied.



Carol J. Zamperini
Neutral

Submitted:

December 28, 1989
Denver, Colorado