

SPECIAL BOARD OF ADJUSTMENT NO. 957

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

"CARRIER"

and

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

"ORGANIZATION"

Award No. 12

STATEMENT OF CLAIM:

Claim of the Brotherhood (BMWE-86-17-F12) that:

The dismissal of Track General Helper J. Brooks was without just and sufficient cause and was arbitrary and capricious.

REMEDY:

The Claimant shall be reinstated without loss of compensation, seniority, and other contractual benefits and privileges the Claimant enjoyed prior to his dismissal.

OPINION OF THE BOARD

Claimant, J. Brooks, was notified by Carrier on July 3, 1986 that he was being discharged for repetitive lateness and overall poor attendance. The Organization seeks the Claimant's reinstatement without loss of compensation.

The arbitration hearing in this matter took place on August 26, 1987. Claimant was notified by Federal Express and certified mail of the hearing date and location, but he did not appear.

Carrier maintains that in view of the Claimant's repeated attendance and lateness violations, his discharge was proper. The Carrier further contends that Claimant's attendance record reflects on obvious disregard for its rules and regulations.

The Organization forcefully argues that the Carrier has exceeded its authority and managerial right by discharging the Claimant without supported reason. It contends that the Carrier, throughout the grievance procedure and at arbitration, failed to meet its burden of providing facts to establish just cause for the discharge. It is further argued by the Organization that the Claimant was originally suspended in violation of Article 401, Section (k)(1) of the Agreement

Article IV, Section 401 of the Labor Agreement, cited by the Organization, states in relevant part:

"(k) An employee charged with falsification of records, theft, unauthorized use of SEPTA property, abuse or misuse of SEPTA-provided benefits, improper fare transaction procedures, being under the influence of drugs or intoxicants, insubordination, leading or participating in an unauthorized work stoppage, contributing to the cause of an accident or a violation of law that reflects adversely on the employee's fitness to continue his employment with SEPTA, may be suspended or immediately barred from reporting to work. In addition, an employee may be suspended or immediately barred from reporting to work in cases where the employee's retention in service would be detrimental to himself, another person, or SEPTA.

(1) In cases where an employee is disciplined by being suspended, and an appeal is taken from such discipline, the suspension shall not be made effective before the appeal is disposed of under the grievance procedure, except as set forth in (k) above."

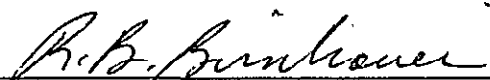
The Board has determined that the claim must be denied.


Carrier has presented sufficient evidence concerning Claimant's substandard absence and lateness record to establish that proper grounds for discharge existed. Work Rule 30 clearly states that employees with substandard attendance records may be discharged. Moreover, Claimant had previously received counselling and warnings for reporting late to work. In March, 1986 Claimant had a discharge for attendance-related violations reduced to a five-day suspension with final caution. Claimant's record nonetheless failed to improve, as he had numerous additional absences and latenesses prior to discharge. In these circumstances, discharge was proper.


The Board has further determined that Carrier committed no procedural errors that would warrant setting aside the discipline assessed. Carrier's clear intent when removing Claimant from service was to discharge, not suspend, him. In these circumstances, Section 401(k) (1) was not applicable.

AWARD

Claim denied.


R. B. BIRNBRAUER
Carrier Member


W. E. LaRUE
Organization Member


S. E. BUCHHEIT
Neutral Member