

SPECIAL BOARD OF ADJUSTMENT No. 957

AWARD No. 2

CASE No. 2

GRIEVANCE 84-4-F12

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
(BMWE)

and

Southeastern Pennsylvania Transportation
Authority (SEPTA)

ISSUE:

Did the discharge of Grievant Darryl Halsell
on April 3, 1984 violate the Agreement? If
so, what shall the remedy be?

OPINION OF BOARD

Grievant Darryl Halsell, Track General Helper, was
charged on March 31, 1984 with "Not being at assigned work
location on 3/30/84 (Girard Ave. BR--9th St. Branch) and
failing to notify SEPTA of his location during the day."
He was "suspended pending investigation...". On April 3,
1984 Grievant was interviewed with respect to:

Incident on 3/30/84 when employee was not at
assigned work location as directed. Employee
failed to notify Septa, as previously instructed,
that contractor was not working. Employee was
given a final warning on 1/10/84 that any further
infractions of Septa rules will result in discharge.

As a result of this interview Grievant was discharged.

A hearing was held in the SEPTA offices in Philadelphia, Pennsylvania on November 21, 1984 at which representatives of the Parties appeared. Full opportunity was afforded to them to offer evidence and argument and to examine and cross-examine witnesses.

The Carrier contends that despite efforts by his Foreman to find him Grievant was not present at his assignment as a Watch person protecting a contractor's crew against moving trains on March 30, 1984. Grievant was familiar with the rule requiring that he call in if the contractor is not at the site, but he failed to do so. As Grievant is a short term employee with a prior suspension and under a final warning his serious infraction justifies termination.

The Organization contends that the Carrier has not sustained its burden of proof, that Grievant was on the job but had a medical reason for absenting himself from time to time, that the leadman should have called if the contractor was not at work, and that the suspension is in violation of section 401(k)(1) of the Agreement. It seeks to have Grievant reinstated and made whole.

The central issues are whether Grievant was on his job assignment during the work day and whether he failed to notify the Carrier that the contractor was not working. Foreman Wilson testified that Grievant had flagging duties when the shift started at 7 AM. By 7:30--7:45 AM Grievant was no longer needed at the assigned location and the Foreman went to pick him up for another assignment. The Foreman checked his flagging area but Grievant was not there. He then spoke to a Security Guard at the Hospital adjacent to the track. The Guard said that he saw Grievant about a half hour before, but did not know where he was now. The Foreman checked by phone with another location to make sure there was no mixup in assignments; there was none. Sometime later in the day the Foreman again returned to the location but Grievant was not there and the Guard had not seen him. The Foreman also testified that he spoke to the leadman who said the contractor was not at Grievant's location that day. At no time had Grievant checked into the Broad and Lehigh office during the shift.

Grievant, the only other direct witness to testify, concedes that he was aware of the following notice to Flagmen dated January 4, 1984:

All RHSL track employees are scheduled to work 7 am. to 3:30 pm. No one is to leave the property prior to quitting time.

Employees assigned duties as Flagmen are to report to their assigned location. If the contractor is not at the site the flagman will wait one-half hour at the work site past the scheduled starting time and then call Broad & Lehigh office (456-4421, 4423, or 4424) for further instructions. These instructions must be complied with.

Although the notice requires the Flagman to call in to the office if the contractor does not show for a period of one half hour, there is nothing in this record to indicate that Grievant followed this direction. Instead, according to Grievant he stayed in the area because the contractor was working on the street below the tracks, but might come up at some time. If Grievant did so it was in complete disregard of the notice, for by his testimony the contractor's crew told him they would be back and he just waited till 3:27 pm, or all day, for them to return without checking in as the notice required.

Nor can the Board credit Grievant's testimony that he had "diarrhea" and had to go to the bathroom from time to time. Grievant never told the Foreman that he was ill that morning or at any time during the day and the doctor's note proffered at the hearing was written a very long time after the incident. Moreover

he was not on his assignment the two times that the Foreman went looking for him. Perhaps he was there sometime early in the morning when the hospital guard saw him, but his whereabouts after that remain known solely to the Grievant. Finally, section 401 (k)(1) states:

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.

In the Board's opinion this provision does not apply in this instance because the discipline involved was termination, not suspension. Given Grievant's short service, prior record with final warning on January 10, 1984 that any further infractions of SEPTA rules will result in a discharge, and the severity of the current violations, termination is appropriate.

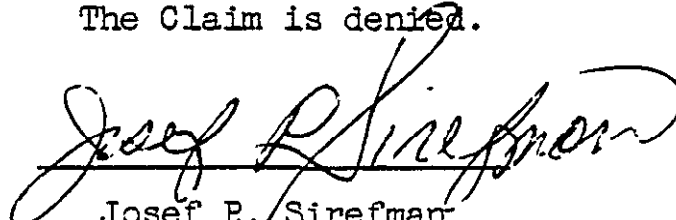
FINDINGS:

Special Board of Adjustment No. 957, upon the record as a whole, finds and holds as follows:

1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. That the Board has jurisdiction over the dispute herein;
3. That the Agreement was not violated.

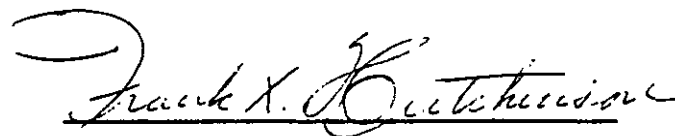
AWARD

The Claim is denied.


Josef E. Sirefman
Chairman



William LaRue
Employee Member



Frank X. Hutchinson
Carrier Member

Dated: September 18, 1985