

SPECIAL BOARD OF ADJUSTMENT NO. 957

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

"CARRIER"

and

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

"ORGANIZATION":

Award No. 7

STATEMENT OF CLAIM:

Claim of the Brotherhood (BMWE-84-23-F12D) that:

The Authority violated Section 401, Paragraph L and Section 903 of the current Collective Bargaining Agreement when it suspended and dismissed Track General Helper D. Bramwell on December 20, 1984.

REMEDY:

Claimant D. Bramwell shall be compensated for all wage loss suffered as prescribed by Section 402(1), and his record cleared of the alleged offense.

OPINION OF THE BOARD

Claimant, D. Bramwell, was discharged on December 20, 1984 for substandard attendance. The Organization seeks the Grievant's reinstatement with back pay.

The arbitration hearing in this matter took place on July 3, 1987. The Claimant was notified by certified mail of the hearing, but he did not attend.

The basic facts are not in dispute. Claimant began working for Carrier in March, 1984. In the months following completion of his probationary period, Claimant had a substandard attendance record, with numerous latenesses and absences. Carrier progressively disciplined Claimant, culminating in suspensions in October, 1983. On December 20, 1983, Claimant was again late for work. Carrier suspended Claimant pending discharge. Claimant was ultimately discharged.

Article IV, Section 402 of the labor agreement, cited by the parties, 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 for 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 Carrier contends that in view of the Claimant's repeated attendance violations, which reflect his obvious disregard for Carrier rules and regulations, the Claimant's discharge was proper.

The Organization maintains that the Claimant's discharge was improper, as Carrier violated Section 401(1) by suspending Claimant and then immediately removing him from service. According to the Organization, the agreement required that Claimant's suspension be stayed until disposition of Claimant's subsequent appeal.

The Board has determined that the claim must be denied.

Claimant's substandard attendance record provided proper grounds for discharge. Carrier complied with progressive discipline requirements prior to discharge.

The Board rejects the Organization's contention that Claimant be reinstated because Carrier violated Section 401(1). Carrier's clear intent when removing Claimant from service was to discharge, not suspend, him. In these circumstances, Section 401(1) was not applicable.

AWARD

Claim denied.

R. B. Birnbauer
R. B. BIRNBRAUER
Carrier Member

W. E. LaRue
W. E. LaRUE
Organization Member
Adm. Sec.

S. E. Buehheit 8-26-37
S. E. BUCHHEIT
Neutral Member