

SPECIAL BOARD OF ADJUSTMENT NO. 957

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

"CARRIER"

and

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

"ORGANIZATION":

Award No. 9

STATEMENT OF CLAIM

Claim of the Brotherhood (BMWE-86-19-F12) that:

The Claimant, Track General Helper W. Glover, was discharged as a result of violating Rule 43, when he was alleged to have been absent without permission from a work site somewhere. The discharge of this Claimant was arbitrary and capricious.

REMEDY:

The Claimant shall be returned to service without loss of compensation, seniority, and other contractual benefits and privileges he enjoyed prior to his discharge.

OPINION OF THE BOARD

Claimant, W. Glover, was discharged for allegedly violating Work Rule #43 (Unauthorized Absence from Assigned Work Area) on July 25, 1986. 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 present and represented by the Organization.

The basic facts are not complex. On July 25, 1986, Claimant was assigned to perform the duties of flagman at the Fort Washington Turnpike overhead Bridge work site. Claimant was directly responsible for warning a contractor's work crew of on-coming trains. At approximately 1:30 p.m. Claimant's superintendent discovered Claimant had left the job site despite his shift not ending until 3:30 p.m. Because he believed Claimant's absence left the lives of the contractor's work crew in jeopardy, the superintendent performed Claimant's function until the end of the shift. The following work day, Claimant contacted the superintendent and reported to him that on July 25 he had worked his full eight hour shift plus one hour of overtime. The superintendent then verbally suspended the Claimant pending discharge.

The Carrier contends that Claimant's unauthorized absence from his worksite was extremely serious, as it left in jeopardy the lives of the work crew he was supposed to be protecting. The Carrier asserts that the Claimant's absence violated Work Rule 43 and constituted proper grounds for discharge.

The Organization maintains that the Carrier has failed to prove the allegations against the Claimant, and that the real reason he was discharged was because of previous absenteeism. In addition, the Organization contends that Carrier violated

Article 401, Section (k) and (l) of the contract by placing the Claimant out of service without proper notification of the alleged charges and before the Claimant was given an opportunity to appeal.

Article IV, Section 401 of the labor agreement, cited by the Organization, states in relevant part:

"(k) An employee charged with falsification of record, 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.

(l) 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."

Work Rule 43, cited by the parties, states in relevant part:

43. Unauthorized Absence From Assigned Work Area

Unauthorized absence from one's assigned work area and/or Authority property as well as being absent without permission from one's assigned work location are dischargeable offenses.

The Board has determined that the claim must be denied.

Claimant's early departure from his work station on July 25 did constitute a serious violation of Work Rule 43 and could have potentially placed the contractor's work crew in danger.

Claimant compounded his misconduct by reporting that he actually

worked overtime on the day in question.

The Board has further determined that Carrier committed no procedural errors that would warrant setting aside the discipline imposed. 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 (ms)
R. B. BIRNBRAUER
Carrier Member

W. E. LaRue
W. E. LaRUE
Organization Member

S. E. Buehheit 1-6-88
S. E. BUCHHEIT
Neutral Member