

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
SOO LINE RAILROAD COMPANY

Case No. 29

STATEMENT OF CLAIM:

Appeal of Claimant James L. Williams' termination from the Carrier's service.

FINDINGS:

On August 16, 1995, the Carrier notified Claimant James L. Williams that a formal investigation was being scheduled to determine the Claimant's responsibility, if any, in connection with his alleged failure to protect his assignment as a result of being absent on July 31, August 1, 2, 3, 8, 9, and 10, 1995. On August 25, 1995, the Claimant was notified that the hearing would be held in abeyance until such time that he returned from medical leave. On October 3, 1995, the Carrier notified the Claimant of the hearing date and that his original charge was being supplemented to include his alleged continued failure to protect his assignment as a result of being absent on August 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31, September 1, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, October 2, and 3, 1995.

The hearing in this matter took place on October 20, 1995. The Claimant was not present. On November 2, 1995, the Carrier notified the Claimant that he consistently failed to make himself available for service and had been found guilty of all charges. As a result, the Carrier terminated the Claimant's employment effective that date.

The Claimant advised the Carrier of his intention to appeal the discipline under the

provisions of the Agreement of June 1, 1990.

The parties being unable to resolve the issues, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to protect his assignment on the numerous days in July, August, September, and October 1995. The record reveals that although the Claimant called on a few of those days, most of those days he did not call in and did not show up for work. Moreover, there is some evidence in the file that the reason that he was not at work was that he had been sentenced to six months in a house of correction for battery and was supposed to report on June 25, 1995, and did not appear. On October 16, 1995, the Claimant was incarcerated at the Milwaukee County House of Corrections for Battery. It is not clear where the Claimant was on the dates that he was supposed to be at work, but it is certain that he did not appear for work as he was required to do.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The Claimant in this case has compiled a record which included a five-day suspension for absenteeism, a ten-day suspension for absenteeism, and a twenty-day suspension for excessive absenteeism. Given the fact that he failed to show up for work and protect his assignment between July 31, 1995, and October 3, 1995, this Board cannot find that the Carrier's action in terminating his employment was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD:

Claim denied.



PETER R. MEYERS
Neutral Member

Dated: January 29, 1996