

SPECIAL BOARD OF ADJUSTMENT NO. 280

AWARD NO. 117
CASE NO. 188

Parties to Dispute:

Brotherhood of Maintenance of Way Employees

and

St. Louis Southwestern Railway Company

Statement of Claim:

Appeal of the dismissal of Section Laborer Vidal R. Flores
on May 24, 1975. 1973

Findings:

Claimant was charged with violating Carrier's General Regulation M-801 of the Rules and Regulations for Maintenance of Way and Structures in that on the day in question he allegedly entered into an altercation with Section Laborer Efrain Corrales.

Carrier contends that the Board has no jurisdiction to consider the claim because there was no contention by the Organization during the handling on the property that Claimant was not guilty as charged, nor was there a claim for compensation for time lost. As such, Carrier asserts, the claim is a request for reinstatement on a leniency basis and cannot be considered by the Board.

The Board disagrees. Basic to the concept of reinstatement on a leniency basis is a positive acknowledgment of guilt by either the Claimant or his representative. Silence is not tantamount to a leniency request.

On the basis of the claim, however, there is nothing to be considered by this Board. Accordingly, the claim must be dismissed.

AWARD

Claim dismissed

Nicholas Kumar
Neutral Member

M. L. Erwin
Carrier Member
Dissenting to third paragraph
of Findings
Date: May 12, 1977

A. J. Cunningham
Organization Member