

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 156
Case No. 243

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE St. Louis Southwestern Railway Company

STATEMENT "Claim of the System Committee of the Brotherhood that:
OF CLAIM

1. Carrier violated the effective Agreement when Laborer Michael Gaynor was unjustly dismissed on October 2, 1979.
2. Claimant Gaynor shall now be reinstated to his former position with pay for all time lost, vacation, seniority and all other rights unimpaired."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant with seven months service was employed as a laborer on Rail Gang No. 10 on the date in question. On October 2, 1979, Rail Gang No. 10 was quartered in trailers at Illmo, Missouri. The record indicates that on October 2, 1979 Claimant remained in his trailer and did not report for work at the normal time. He had been called by Assistant Foreman McCool and indicated that he was not going to work. He did not have permission to remain off work that day. Claimant was dismissed by letter dated October 4, 1979 for absence without authority on October 2. Claimant requested a hearing with respect to his dismissal which was held on October 30, 1979. By letter dated November 1, 1979 Carrier indicated that it would sustain its conclusion and the dismissal would stand.

The record indicates that Claimant had sustained an injury to the little finger of his right hand on September 26, 1979. When the finger began to swell Claimant was taken to

a doctor in a nearby town by the Assistant Foreman on September 27, 1979. Claimant was off work on Friday, September 28 on personal business. On Monday, October 1, Claimant returned to the doctor's office and was released to partial duty on that date. Claimant worked on October 1 from 3:30 P.M. until 11:30 P.M. Claimant contended that his finger was sore and swollen on the date that he was dismissed from service for absence, that is on October 2. However, there is no indication that he communicated with his foreman with respect to his intended absence.

The record indicates that Claimant had been absent without authority on four dates earlier in the year. On the last of such occurrences, August 6, 1979, he was dismissed from service. He was subsequently reinstated without pay for time lost on a leniency basis on August 27, 1979.

There is no question but that Claimant had no permission to be off work on October 2. If indeed he had a problem with a finger this should have been reported and he should have secured permission from his foreman or at least communicated with his foreman prior to simply refusing to come to work with Assistant Foreman McCool. Carrier must have the right to rely on the attendance of his employees unless there is adequate reason for an absence and such information has been relayed to Carrier. Thus, in the case at bar there is no doubt but that Carrier was justified in concluding that Claimant was improperly absent on the day in question: he neither reported nor communicated his problem, if indeed there was one, to anyone in authority on the date in question. With respect to the penalty of dismissal, the Board can find no mitigating circumstances warranting disturbing Carrier's conclusion particularly in view of Claimant's poor prior record including a dismissal earlier during his relatively short period of service. The Board does not view Carrier's decision as being arbitrary, capricious or an abuse of discretion. Hence, the claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman



Carrier Member



Employee Member

January , 1981
Houston, Texas