

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 158  
Case No. 245

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 Kenneth C. Smith was unjustly dismissed on January 25, 1980.
2. Claimant Smith 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 who had been employed by Carrier on August 1, 1979 was scheduled to work on January 25, 1980 as a member of Extra Gang 49 at 7:00 A.M. Claimant began to work at 1:00 P.M. when he was approached by his foreman and was dismissed. At the time that he dismissed Claimant is alleged to have cursed his foreman and started an altercation with him. Following Claimant's dismissal, upon his request, a hearing was held on February 14 following which Carrier determined to sustain its dismissal decision.

An examination of the record of the investigation indicates that there was substantial probative evidence to support Carrier's conclusion that Claimant was guilty of the charges placed against him. In spite of his claim that he wasn't feeling well in the morning, the record is unequivocal that he did not report for work at the assigned time and did not seek permission to be absent on the morning in question. Further, there is no doubt but that he engaged in a serious altercation with his foreman after returning

to work at 1:00 P.M.

The record also indicates that on November 29, 1979 Claimant kicked his foreman after being issued a dismissal for being absent without authority for being late to work. He was dismissed at that time and was reinstated on January 14, 1980, some eleven days prior to the incident involved herein. Based on this record and in view of Claimant's relatively short period of service with the Carrier, there can be no question but that the penalty assessed was neither harsh nor excessive under the circumstances. The claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman



Carrier Member



Employee Member

January , 1981  
Houston, Texas