

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 160
Case No. 247

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. Carrier violated the effective Agreement when Laborer Larry R. Tanner was unjustly dismissed by letter dated January 29, 1980.
2. Claimant shall 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 had worked for the Carrier for ten months prior to the critical incident involved herein. On January 24, 1980 Claimant was in a gang (Extra Gang 6022) who were to be transported by bus to their work site. En route the bus had a flat tire and the Assistant Foreman instructed all the men to get off the bus into the gang truck and then the truck would go to the job with as many men as possible. Personal vehicle transportation was to be arranged for the remaining men. According to the Carrier's testimony at the hearing, the Assistant Foreman asked the men to get off the bus and to get into the gang truck. All the men left the bus except the Claimant herein. The Claimant was asked three or four times to get off, according to Carrier and simply sat there or lay in the seat without getting out. He finally left the bus only after he was told he was fired. Claimant was in receipt of a letter dated January 29 indicating that he was dismissed because of violation of Rule 801 of the Rules and Regulations for the government of Maintenance of Way and Engineering Department employees.

That Rule reads as follows:

"Employees will not be retained in the service who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious or who conduct themselves in a manner which would subject the railroad to criticism."

Claimant, following receipt of the letter, requested and received an investigatory hearing on the charge. Following the hearing, Carrier reaffirmed its decision to terminate Claimant having found him guilty of the charge as initially brought.

The essential position taken by Petitioner is that the Assistant Foreman was unreasonable in asking the employees to get off the bus and stand along side the road when it was cold out and there was no work to be performed. Further, Claimant did obey the instruction by the Assistant Foreman as soon as he could get his things together. In addition, the Organization insists that Claimant did not receive a fair hearing in that the Hearing Officer acted as the officer dismissing Claimant by letter dated January 29 and also as presiding officer at the hearing and further gave the decision after the hearing reaffirming the initial decision. In addition, the Organization argues, that the dismissal under the circumstances herein was harsh, excessive, arbitrary and capricious.

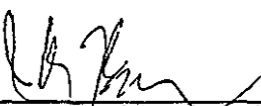
Carrier states that the evidence at the investigative hearing clearly demonstrates that Claimant was insolent and disrespectful in refusing to obey the instructions of the Assistant Foreman. It is clear that he was insubordinate in that all the employees with the exception of Claimant left the vehicle when asked to do so by the Foreman. There was no excuse according to the Carrier for Claimant's refusal. Carrier also states that in view of Claimant's past record and his short service, the penalty of dismissal was wholly appropriate under the circumstances. In addition, Carrier denies that there was anything improper in the role assumed by the Hearing Officer as charged by the Organization.

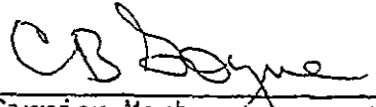
The Board finds that there was nothing improper in the procedure of the hearing as charged by Petitioner. Nothing in the rules precludes Carrier from assigning the same officer who levies the original discipline to act as Hearing Officer and ultimately make the determination after the hearing. Such multiplicity of roles is common and is without doubt questionable only if the conduct of such a Hearing Officer in any manner is discriminatory or appears to deny the Claimant his due process. An examination of the transcript of the proceedings herein indicates nothing whatever ^{un}toward occurred with respect to the ability of Claimant to mount a defense. In short, the role of the Hearing Officer was impeccable with respect to the propriety of the hearing. Thus, the procedural argument does not have merit.

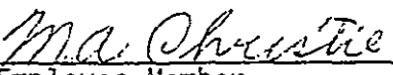
Based on the credibility findings of the Hearing Officer there is no doubt but that Claimant did, indeed refuse to obey the instructions of his Foreman after repeatedly being asked to leave the vehicle. Thus, the finding that he was guilty of insubordination cannot be questioned. With respect to the measure of discipline imposed, the Board notes that although dismissal might appear to be a harsh penalty for the particular infraction if considered in isolation, the penalty in this instance was appropriately weighed in light of Claimant's past record. The Board notes that during Claimant's short span of service he was disciplined (including dismissal and subsequent reinstatement) on four separate occasions. Thus, the measure of discipline determined by Carrier cannot be considered to be arbitrary, capricious or discriminatory and the Board must conclude that the claim should be denied.

AWARD

Claim denied.


I.M. Lieberman, Neutral-Chairman


Carrier Member *Sgt 10*


Employee Member