

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 161
Case No. 248

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 Mr. DeRegional Cain was unjustly dismissed on January 31, 1980.
2. Claimant Cain shall be reinstated to his former position with pay for all time lost, seniority, vacation 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 having been employed with Carrier for slightly over five months at the time of the incident herein was working as a Laborer on an Extra Gang. On January 31, 1980 Claimant requested permission to leave work at noon that day from his Foreman. Testifying that he thought he had such permission, Claimant left his position at 1:00 p.m. that day. Subsequently, he was dismissed for being absent from his position without proper authority. At the investigation, the Foreman indicated that although he had been requested the early departure by Claimant, he had refused such request since his own instructions which had been relayed to his Gang were that all must work until the end of the day unless there was an emergency involved.

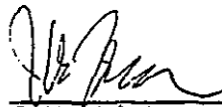
Petitioner argues that Claimant herein was a good employee without question by Carrier and further, that even if he were guilty of the infraction involved, dismissal was inappropriate. Carrier, on the other hand, indicates that Claimant was clearly told that he should not be absent and that he deliberately left his position without authority

and in view of his short service, dismissal was the appropriate penalty.

The issue in this case boils down to one of credibility. Claimant insists that he was given permission to be off at 1:00 p.m. and his Foreman testified that he was not. The veracity of one of the two men is the crux of this matter. Clearly the Board is in no position to make a credibility finding. It is a well established principle in investigations involving discipline in this industry that the trier of facts or the Hearing Officer is the only person in a position to make a determination as to the veracity of statements made by witnesses. Boards such as this accept the determination of the Hearing Officer in this regard. Under the circumstances, therefore, this Board has no choice but to assume that the Hearing Officer's finding was a correct one and that Claimant did not have permission to leave his post at 1:00 p.m. on the day in question. Thus, he was guilty of the charge. With respect to the penalty imposed, in view of his short service, the Board does not believe that Carrier's decision was arbitrary, capricious or an abuse of discretion. Hence, the claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman

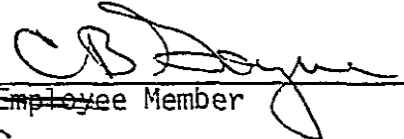


Carrier Member

Employee

Houston, Texas

August 10, 1981



Employee Member

Carrier