

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 162
Case No. 249

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 T.A. Smith was unjustly dismissed by letter dated February 5, 1980.
2. Claimant Smith shall be reinstated to his former position with pay for all time lost, vacation, seniority and all other rights unimpaired; also that his record be cleared of this charge."

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.


In most material respects the dispute herein is identical to that contained in Award No. 161 of this Board. As in the earlier case, the Claimant herein, a short service employee of approximately six months asked for an early quit on January 31, 1980. As in the earlier dispute, he believed that the Foreman had granted him permission to be off. At the hearing, following his dismissal, the Foreman testified that he did receive the request for time off but did not grant the early quit. Furthermore, it is indicated in this dispute that the Claimant had indicated he had an emergency but did not tell the Foreman what the nature of the emergency was but merely indicated that he had urgent personal business to take care of. In essence, therefore, the issue herein as in the prior case involves a credibility question. If Claimant was correct in his assertions, he did indeed receive permission to be off and should not have been disciplined much less dismissed. However, the Hearing Officer made the determination in this dispute, as in the earlier dispute, that the version of the events on January 31 as related by the Foreman were accurate and the testimony of Claimant indicated a pre-

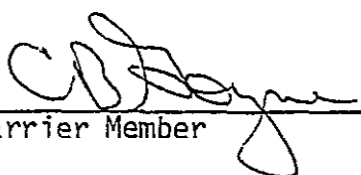
sumption only that he had been granted time off when indeed he had not been granted such permission. The conclusion is inescapable that Claimant was guilty of the charge made by Carrier.


Concerning the measure of discipline imposed, again, the short service employee and the gravity of the offense involved, the Board has no choice but to indicate that the Carrier was within its prerogatives in making such determination. There is no evidence of any impropriety or discrimination in the decision to terminate Claimant. Carrier has the obvious right to insist that employees be present for work during assigned hours. Any deviation from such policy would be grossly incorrect from the standpoint of any employer such as this. The Board must conclude that the claim does not have merit and must be denied.

AWARD

Claim denied.


I.M. Lieberman, Neutral-Chairman


Carrier Member


Employee Member

Houston, Texas
~~August~~ 1981
Sept 10