

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 165
Case No. 252

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 Robert L. Jackson was unjustly dismissed on February 14, 1980.
2. Claimant Jackson 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 Jackson, an Extra Gang Track Laborer, was headquartered in trailers on February 14, 1980 in the course of his regular assignment. The record indicates that he came off duty about 4:00 P.M. on February 14, 1980. Subsequently between 10:00 and 11:30 P.M. on that same evening the Claimant was charged with conduct warranting his dismissal. He was charged with being intoxicated, being engaged in disorderly conduct and using profanity towards his foreman and other employees that night. Thus, he was told he had violated a number of Carrier rules by his conduct and following his dismissal and a hearing, Carrier reaffirmed its actions.

From the record of this dispute, it appears that Claimant was involved in a dice game with a number of other employees including his foreman that night. Following the gambling he apparently became drunk and disorderly. He refused to be quiet, disturbed other employees, swore at and threatened his supervisor and other employees. This resulted in Carrier's disciplinary action. Claimant's primary defense to the charges

and actions involved were first that he had "taken" his supervisors for major losses in their gambling and his dismissal was vindictiveness on their part. Secondly, Petitioner stipulates that the penalty of dismissal was harsh and unwarranted under all the circumstances.

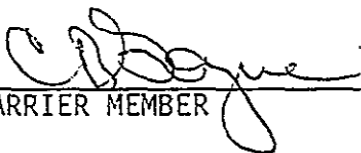
From the testimony at the hearing, it appears that regardless of whether or not there were gambling losses involved, the charges against Claimant were substantiated by significant evidence which can not be discredited. Thus, Carrier established his guilt on the evening in question. While the Board would have some serious doubt about whether his dismissal was warranted by virtue of his having been drinking in the trailers while off duty (even though contrary to Carrier's rules) there is no doubt but that there were additional elements other than the use of alcoholic beverages. The threats and profanity used against his Foreman and other employees is intolerable even though he was intoxicated. Thus, in toto, the Carrier was justified in its conclusion that Claimant was not only guilty but should be dismissed. The Board has no choice but to deny the claim.

AWARD

Claim denied.



I.M. LIEBERMAN, NEUTRAL-CHAIRMAN



CARRIER MEMBER



EMPLOYEE MEMBER

Houston, Texas
August , 1981
Sept 10