

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 176
Case No. 263

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

"Claim of the System Committee that:

1. The Carrier violated the effective Agreement when Track Laborer D. R. Hawthorne was unjustly dismissed on November 23, 1981.
2. Claimant Hawthorne shall now be reinstated to his former position with all seniority, vacation, all other rights accruing to him unimpaired, in addition to all compensation lost commencing November 23, 1981 and to run concurrently until such time as he is allowed to return to duty."

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.

On November 23, 1981, Claimant was addressed a letter which dismissed him from service with the Company for allegedly engaging in a verbal altercation with his foreman in violation of Company Rules and Regulations Nos. 801 and 802. Those rules prohibit employees from being insubordinate, quarrelsome or discounteous, among other things. Following a hearing requested by Claimant, Carrier reaffirmed its earlier decision to dismiss Claimant. No procedural improprieties were raised by petitioner.

The background of this matter were occurrences on Friday, November 20, 1981. On that date Claimant (an extra gang laborer) was working with a gang headquartered at Shreveport, Louisiana. On that date, however, he was instructed to work with a different gang at a crossing some 32 miles from Shreveport. He was instructed by his foreman to ride in a Company truck to that location and return in that truck at the end of the day. On that Friday, after completing the work, the foreman instructed the men, including Claimant, to load the tools onto the truck

as it was near quitting time. Claimant complied with this instruction and was waiting for the welders to complete their work. He went to the restroom and, when he returned to the truck, a train passing the area blocked him and he could not cross the tracks until the train passed. When the train passed, he found that the truck had left without him and he had no means of transportation back to Shreveport. He had to call a friend to come and get him which was his means of returning to his headquarters. The testimony at the investigation revealed that the foreman and the assistant foreman, as well as the truck driver, were all aware that Claimant was not on the truck when the foreman instructed the driver to leave without him. His rationale for that action was the fact that Claimant was not permitted to leave the area when the truck was ready to depart and did so without authority. Hence, he instructed the driver to depart.

On the following Monday, November 23, the Claimant, according to his testimony, approached the foreman in an effort to find out why he had instructed the truck driver to leave him at the location some 32 miles from headquarters on the previous Friday. The testimony as to what transpired thereafter is somewhat contradictory but the following facts emerge: it is clear that Claimant used profanity and threats to the foreman and it is also clear that foreman used threats and profanity with respect to Claimant. The altercation, however, was wholly verbal. It was based on this exchange of profanity and threats that Claimant was dismissed.

Carriers avers that there was no doubt but that Claimant was guilty of the charges. Further, in view of Claimant's past record over approximately 3 years and 9 months, the penalty of dismissal was considered appropriate by Carrier. Carrier notes that Claimant had been suspended in 1978, was given a letter of reprimand in 1978, was issued another letter of reprimand in 1979, was given a 7-day suspension in 1979, and was issued 45 demerits in 1981 and a further letter of reprimand on February 17 and October 2, 1981.

Petitioner argues that Claimant had justifiable reasons for approaching his foreman as to why he had been left some 32 miles from his headquarters on the previous Friday, without any transportation. He should have been informed as to the reason he was left, rather than having the foreman start an argument, according to the petitioner. The organization insists that the entire discussion could have been a normal one but for the foreman's belligerent and threatening attitude during which time he threatened to kick Claimant. The organization alleges that

the dismissal of Claimant under all the circumstances was both unsubstantiated and harsh and excessive.

From the transcript of the investigation, it is apparent that Claimant did, indeed, use obscene language and was belligerent with respect to his foreman. However, from the same evidence, it is also apparent that the foreman bears considerable responsibility for his own abusive and unseemly conduct in the course of the altercation. Thus, although Claimant was clearly guilty of the charges, the foreman bears culpability and responsibility, at least in part, for the events which took place on the day in question. Under these circumstances, the Board is of the opinion that the discipline assessed was too severe and harsh under the particular circumstances. It must be noted that a foreman has more responsibility, even than an employee, in terms of his behavior, as the superior and supervisor.

AWARD

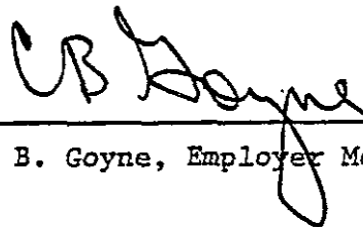
Claim sustained in part; claimant shall be reinstated to his former position with all rights unimpaired, but without compensation for time lost.



I. M. Lieberman, Neutral-Chairman



M. A. Christie, Employee Member



C. B. Goyne, Employer Member

Houston, Texas

September , 1983