

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 181
Case No. 268

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. Carrier violated the effective agreement when Track Laborer Charles Calloway was unjustly dismissed on June 17, 1982.
2. Claimant Calloway shall now be reinstated to his former position with pay for all time lost commencing June 17, 1982, and to run concurrently until such time as Mr. Calloway is returned to service with seniority, vacation and all other rights due him restored 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 herein, with approximately 8½ years of service, was charged with being absent without authority on June 7, 8, 9, 10, 11, 14, 15, 16 and 17, 1982. For this absence claimant was dismissed from service. He requested a hearing which was held on July 22, 1982, and following that hearing Carrier reaffirmed its decision to dismiss him.

The record indicates that there is no doubt that claimant was indeed absent on the days indicated. His foreman testified that he had not received any word from the claimant and considered him to be absent without permission for the days involved. Carrier argues that claimant was given a fair and impartial hearing, was found guilty, and was properly dismissed. He admitted that he did not work on the days in question and that he did not talk to his foreman about being off on

those days. Carrier feels that the discipline in this instance was justified and requests that the claim be denied.

The claimant alleged at the investigation that he attempted to reach his foreman on June 6, when he became ill, but was unable to get through to him by telephone. On June 7, claimant maintains that he called Carrier's office and talked to a person who he thought was a clerk, whom he had talked to previously, and told the clerk that due to his illness, it was necessary for him to be off work. The record indicates that claimant contacted his physician on June 7 and was treated by him from June 7 until he was admitted to a hospital on June 22. He was released from the hospital on June 28. Claimant further testified that in the past when he was to be off due to illness, he had called the clerk in the District Manager's office and understood that the clerk had the authority to grant him the time off until released from the doctor's care.

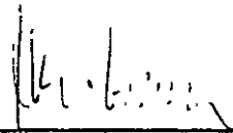
There is no doubt that claimant was off without permission for the dates indicated. Although he may very well have contacted the clerk as he alleges, there is no record of that conversation and the foreman indicated that he was unaware of any reason for claimant to be off work. Thus, there is no doubt that claimant was guilty of the charges involved. The only question for this Board to determine, then, since the evidence supports Carrier's conclusions, is whether the measure of discipline was appropriate. The mitigating circumstances in this dispute are the fact that claimant had 8½ years of service with Carrier and that he, indeed, was sick and under a doctor's care from June 7 until June 28. It is possible that he misunderstood the nature of the authority required to be absent due to illness based on his past experience. Under the circumstances enumerated above, the Board is of the opinion that the discipline in this instance was too harsh. Although claimant did not abide by the rules and seek permission to be off, he should not have been dismissed under the circumstances. Thus, we will order claimant's reinstatement to his former position with all rights unimpaired but without compensation for time lost. His return to work will be subject, of course, to the usual return to work physical examination.

AWARD

Claim sustained in part; claimant will be returned to service to his former position with all rights unimpaired but without compensation for time lost. His return to work shall be conditioned upon passing the usual return-to-work physical examination.

ORDER

Carrier will comply with the award herein within thirty days from the date hereof.



I. M. Lieberman, Neutral-Chairman



M. A. Christie, Employee Member

Carrier Member

Houston, Texas

February 1984