

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 182

Case No. 269

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 Laborer-Driver Larry Paschal was unjustly dismissed on May 20, 1982, and was not given a fair and impartial hearing.
2. Claimant Paschal shall now be reinstated to his former position with pay for all time lost and with all vacation, seniority and all other rights unimpaired on account of his unjust dismissal from service."

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 had approximately 8 years of service with Carrier. He was dismissed from service on May 20, 1982, following a letter in which he was charged with being absent without permission on May 19 and 20, 1982. After a hearing held on June 14, 1982, Carrier's decision to terminate claimant was re-affirmed.

Petitioner argues that the hearing was not conducted properly by the hearing officer who was prejudiced. There is no evidence in the record, as the Board views it, to support this contention. Hence, this aspect of the claim is without merit.

Carrier insists that claimant was indeed absent without authority for the two days indicated and, based on Carrier's rules and a record of similar types of infractions having been the subject of similar discipline in the past, he should be dismissed. Petitioner, on the other hand, argues that there were

mitigating circumstances involved in this matter. The Organization alleges (and the testimony at the hearing bears out these facts) that on May 19, 1982, it was necessary for claimant to be off work in order to attend the funeral of his grandmother. Further, right after the funeral, claimant's cousin went into a coma and he had to be off for an additional period of time. Thus, the two days were caused by emergency situations. The claimant returned to work on May 21. He advised his foreman that he had been unable to contact him to advise him of the reason he was to be off and secure permission, since he had lost his foreman's telephone number.

The Board notes that in the approximately 8 years of service, claimant had had one prior disciplinary incident only on his record. Further, there was testimony at the hearing that he was considered to be a good employee by his foreman. Although there is no question that the claimant was guilty of failure to contact supervision with respect to his absences on the two days involved, there were circumstances which made the problem somewhat difficult. The question of his guilt, therefore, is unassailable. For that reason, the only issue to be resolved by this Board is whether the discipline was appropriate. In the Board's view, dismissal under the circumstances was harsh and unnecessary. Even though Carrier has a right to be sure that its employees are present and willing to work, or that it is forewarned of their impending absence and has an opportunity to approve such requests, the discipline of employees must be constructive. In this instance, dismissal was obviously too harsh and should be changed. Thus, claimant will be reinstated to his former position with all rights unimpaired, but without compensation for time lost.

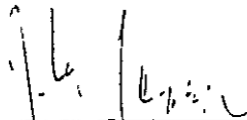
AWARD

Claim sustained in part; the discipline involved was excessive and shall be changed so that claimant will be reinstated to his former position with all rights unimpaired but without pay for time lost.

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