

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 186
Case No. 273

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 J. D. Lewis was unjustly dismissed from service on April 13, 1983.
2. Claimant Lewis shall not be reinstated to his former position with pay for all time lost, with all seniority, vacation and all other rights 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.

The background of this dispute is that on April 13, 1983, the Regional Engineer issued instructions to the employees of the various gangs under his supervision that there would be no overtime pay. Claimant was required to work overtime on March 3, 1983, and when he received his pay check, he found that he was not being paid for the overtime for that day. He therefore felt that he was being cheated out of two hours of overtime.

On April 13, 1983, at 4:00 P.M., claimant was instructed to work overtime by his foreman. His response was to ask the foreman to sign a piece of paper showing that he worked overtime. This the foreman refused to do, saying it wasn't required by the rules. The record does indicate that certain supervisors did, indeed, sign such slips, but there was no requirement for them to do so.

Apparently claimant refused the overtime required unless the piece of paper showing that he was authorized to work the overtime was signed by the foreman. There ensued an argument over this by the two, including some alleged threats made by the claimant to the supervisor. The upshot of this interchange was that the claimant was fired for insubordination and for threatening a supervisor.

The Organization contends that claimant was dismissed improperly since he was merely trying to have the rules which indicate that no overtime should be worked without authority enforced. The Organization insists that on the contrary the foreman was violating the Company's rules by not recording claimant's time properly so that he would be compensated for overtime work. The Organization insists that claimant's reaction to being once again in his view to work overtime without being compensated was normal, and he certainly should not have been discharged for that action. Further, the Organization argues, Carrier's practice of working laborers, who had arduous tasks to start with, for long periods of time without compensating them, was unjust and contrary to the agreement.

Carrier argues that the record is quite clear that the claimant was dismissed due to his insubordinate and threatening behavior. There is no question but that claimant's recourse, if indeed he felt he was being abused by the supervisor, was to file a grievance. Rather than file a grievance, he took the action into his own hands which was totally improper and contrary to the rules and all normal codes of conduct in the industrial field. Carrier notes that the claimant admitted that he refused to work the overtime without the foreman signing the slip which he had requested. Thus, there was no doubt of his insubordinate behavior. The Company notes, further, that insubordination is a dischargeable offense and claimant's behavior should not and cannot be tolerated.

After a careful examination of the record on a factual level, the Board is convinced that claimant was indeed insubordinate in his conduct on the day in question. The matter of the threat, however, is open to serious question. The Board is not persuaded that the evidence supports that contention. Nevertheless, claimant had no right to refuse to work the overtime under the circumstances involved herein. Contrary to petitioner's position, claimant should not have

"stood up for his rights" in the manner which he chose. He was required to obey the instructions of the supervisor and to file a grievance based on his alleged failure to receive overtime compensation. Whether he was right in terms of the previous matter or not, and recognizing the conflict in terms of the policy to refuse employees overtime, is immaterial. The fact of the matter is that he should not have refused to work the overtime. His own testimony indicates that he needed the overtime and never refused it in the past, which is contrary to his actions in the heat of his argument with his supervisor.

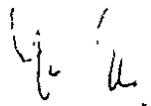
The Board is convinced that Carrier was right in that claimant's conduct required discipline. However, under the circumstances involved herein, the Board believes that the discipline of dismissal was unwarranted and arbitrary in this instance. The nature of the dispute and the nature of the insubordination required punishment but not dismissal. Therefore, the Board will order Carrier to reinstate claimant to his former position but without compensation for time lost as the penalty for his action.

AWARD

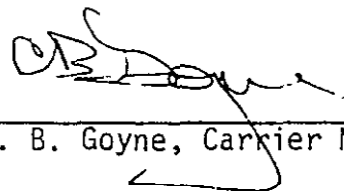
Claim sustained in part; claimant shall be reinstated to his former position with all rights unimpaired but without compensation for time lost.

ORDER

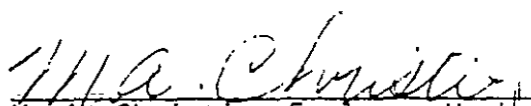
Carrier will comply with the award herein within thirty (30) days from the date hereof.



I. M. Lieberman, Neutral-Chairman



C. B. Goyne, Carrier Member



M. A. Christie, Employee Member