

50-51

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 189
Case No. 276

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 Foreman W. O. Smith was unjustly dismissed on July 14, 1983.
2. Claimant Smith shall be reinstated to his position as Track Foreman with pay for time lost commencing July 14, 1983, and to run concurrently until such time as he is returned to work with vacation, seniority 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.

The claimant herein was working as a Foreman of an extra gang North of Texarkana. He had been employed by Carrier for approximately 9 years, including 5 years as a Foreman.

On July 14, 1983, the claimant was dismissed by the Carrier for a charge that he allegedly failed to properly supervise his employees when he had them off Company property during assigned working hours. This action was construed to have been a violation of portions of two of Carrier's operating rules. Following a hearing, the decision of Carrier to dismiss Mr. Smith was reaffirmed.

The record indicates that at approximately 10:00 A.M. on July 14 claimant and his gang had completed a job and were moving to another location. In the course of this move, the Foreman stopped the gang truck and went into a supply store. He allowed his gang to leave the truck and go into the store for a coke break.

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The record indicates that claimant's testimony was that he had gone into the store to buy a starting rope for one of his motors. It was also evident from the record that it was common for claimant to use this supply store, as well as other supply stores, to buy small items out of his own pocket to keep the group working smoothly. The testimony indicated further that he did not purchase any item of supply in the store and that the men did, indeed, take a coke break. The testimony, however, was (from the clerk in the store) that they were out of the starting ropes at the time.

Upon leaving the store, claimant was confronted by the Regional Maintenance of Way Manager and the District Maintenance of Way Manager. Their testimony indicated that he had parked the vehicle at the supply store at 10:30 A.M. and came out of the store with certain of his laborers at approximately 10:57 A.M. Furthermore, according to the testimony of the Company officials, Mr. Smith indicated that he had gone into the store because he was giving his men a break. This was also substantiated by two of the laborers. The testimony indicated further that it was not normal procedure for a crew to take a break off Company property, which was in fact a violation of the rules. Carrier's decision to dismiss claimant was based on its assessment of the evidence which indicated a clear violation of the Carrier's rules, together with an evaluation of his past record. That record indicated that he had received two oral admonishments, as well as four letters of caution for various infractions over the previous two years.

Petitioner argues that the record does not establish claimant's guilt since he went into the store to buy a starting rope to keep the job going. Furthermore, the Organization maintains, dismissing claimant, who was a dedicated employee with nine years of service, would be a harsh and excessive punishment under all the circumstances, even if he were guilty.

The evidence indicates that the hearing officer made the determination that claimant, indeed, went into the store to give his men a break and did not credit his story that he went in simply to buy a starting rope. In the Board's view, regardless of which version of the motivation for the stop is made, clearly the period of time in the store was somewhat excessive and, if for a break, was indeed a violation of Carrier's rules. On the other hand, claimant's past record of service

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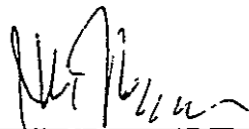
and the nature of the infraction do not justify the ultimate penalty of dismissal. Such a penalty, under the circumstances, is harsh and improper. The Board notes that claimant was never accorded even a demerit, much less discipline of suspension for prior infractions. Thus, the progressive nature of the discipline does not appear to have been employed in this instance. Based on the entire record, therefore, the Board has determined that claimant shall be put back to work with all rights unimpaired. However, his discipline shall be changed to a 30-day suspension. He shall be made whole for all loss of pay during the period out of work, less the earnings from other employment in the interim period.

AWARD

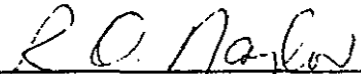
Claim sustained in part; claimant shall be returned to service with all rights unimpaired and the discipline shall be diminished to a thirty-calendar day suspension. Claimant shall be made whole for all loss of pay during the period out of work (less the suspension) except that this will be diminished by the earnings from other employment in the interim period.

ORDER

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


I. M. Lieberman, Neutral-Chairman


M. A. Christie, Employee Member


R. O. Naylor, Carrier Member

Houston, Texas
January 14, 1985