

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 193
Case No. 280

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 Welder Helper Gary D. Wallace was unjustly dismissed October 3, 1983, and was not afforded a fair and impartial hearing.
2. Claimant Wallace shall now be reinstated to his former position with all seniority, vacation rights and all other rights accruing to him and, in addition, be compensated for time lost commencing October 3, 1983, and to run concurrently until such time as he is restored to 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 had jurisdiction of the parties and the subject matter.

Claimant had worked for Carrier for approximately 12 years at the time of the incidents involved in this dispute. On March 1, 1983, claimant suffered gunshot wounds to his chest and left shoulder due to an altercation at his apartment in off-duty hours. He attempted to return to work after securing a medical release on April 8, 1983, but was required to take a return-to-duty examination. Based on that examination, Carrier would not return claimant to work but attempted to secure further medical information dealing with psychiatric treatment which claimant had undergone in the past. This report was received by Carrier's Chief Medical Officer and in a letter dated September 12, 1983, Dr. Hyder, the Chief Medical Officer, indicated that claimant was medically not qualified to return to work. During the hiatus between the original return-to-work medical examination and the ultimate determination with respect to medical disqualification, an article appeared in the local paper in Pine Bluff, Arkansas, which indicated that claimant was charged with a criminal attempt to commit burglary and threatening. The newspaper article

indicated he was being held in the County jail in lieu of bond. Subsequently, claimant entered pleas of guilty for reduced charges of criminal trespass and terroristic threatening as misdemeanors. The Court assessed a punishment of a fine and costs. Carrier, assuming that the information would be widespread in the little community involved and that all involved in the community knew that he was employed by the Carrier, dismissed claimant for violation of its own Rule M801. That rule states, in pertinent part:

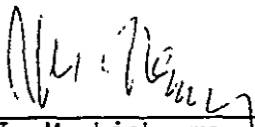
"Employees will not be retained in the service who are careless of the safety of themselves or others, indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious or who conduct themselves in a manner which would subject the railroad to criticism."

Following a hearing granted at claimant's request, Carrier reaffirmed its decision to dismiss him.

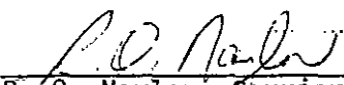
A review of the transcript of the investigation reveals no question but that the facts are well established with respect to the conclusion reached by Carrier. Petitioner insists that at the time of his dismissal, claimant was already in a disqualified posture and, hence, dismissal was inappropriate. The Board does not agree. It is clear that claimant at the time of his dismissal still retained his seniority and was in the position of an employee who was at the time medically disqualified. Furthermore, in view of his past record which Carrier cites in its conclusion, there is no doubt but that Carrier was justified in its decision to terminate claimant. For the reasons indicated, the claim must be denied.

AWARD

Claim denied.


I. M. Lieberman, Neutral-Chairman


M. A. Christie, Employee Member


R. O. Naylor, Carrier Member

Houston, Texas

January 14, 1985