

SPECIAL BOARD OF ADJUSTMENT NO. 280

Award No. 195
Case No. 282

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 Machine Operator T. W. Dial was unjustly dismissed by letter dated October 4, 1983.
2. Claimant Dial shall now be reinstated to his former position with pay for time lost and with seniority, vacation and all other rights restored, and his personal record be cleared of all charges."

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 was dismissed from service on October 3, 1983, and, at his request, a hearing was held on December 8, 1983. Subsequently, by letter dated December 19, 1983, Carrier sustained its prior decision to dismiss him. The dismissal was based on an incident which occurred on September 29 while claimant was assigned to a tie inserter. On that date, claimant was moving the tie inserter from the job site to the siding at Hubbard, Texas, and in the course of this movement, the tie inserter collided with a tie crane causing serious physical damage to the equipment and an alleged injury to claimant.

Petitioner insists that claimant was not guilty of the negligence for which he was discharged since the accident was caused by the throttle on the piece of equipment sticking and the brakes failing. Carrier, on the other hand, indicates that its decision to dismiss claimant was based on its investigation and subsequent testimony indicating that the accident was a result of claimant's negligence.

An examination of the transcript of the investigation reveals that the mechanic who was responsible for the equipment testified that the brakes and throttle were in good working order prior to the incident involved in the accident. Further, another employee using the equipment also found no fault with either the brake or the throttle. In his testimony claimant indicated that not only did the throttle hang and the brakes failed, but also the horn did not work and the door would not unlock to the cab of the equipment. It is clear from the evidence presented that the hearing officer did not credit claimant's testimony, but rather credited that of other employees, including the mechanic, with respect to the working order of the equipment involved. It is further observed that claimant had not reported recent problems with the brakes of the equipment prior to the incident involved.

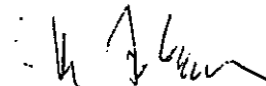
As the Board views it, there was sufficient evidence adduced at the hearing to warrant Carrier's conclusion that claimant was guilty of the negligence with which he had been charged. In the Board's view, however, the discipline accorded claimant was intense and severe and in excess of what was required. It is the Board's view, therefore, that the discipline has served its purpose at this time and claimant should be returned to his former position but, as a matter of the discipline, will not receive compensation for time lost. It noted, however, that claimant's personal physician indicated that he is unable to work. Therefore, the conclusion reached by this Board obviously does not indicate that he is physically qualified to operate the equipment. Thus, he must demonstrate medical evidence that he is physically able to return to work before being given his job back.

AWARD


Claim sustained in part; claimant shall be returned to his position with all rights unimpaired but without compensation for time lost provided he is medically qualified to return to work.

ORDER

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


I. M. Lieberman, Neutral-Chairman


M. A. Christie, Employee Member


R. O. Naylor, (Carrier Member)

Houston, Texas
January/4, 1985