

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES     )  
TO            )  
DISPUTE    )  BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
              )  ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

AWARD

STATEMENT OF CLAIM:

"1.     Carrier violated the effective Agreement when Welder R. W. Miller was unjustly dismissed from service.

2.     Claimant Miller shall now be reinstated to service with pay for all time lost commencing September 22, 1986, and on a continuing basis, with seniority, vacation and all other benefits restored intact and charge of violation of Carrier Rules as contained in charge letter dated September 22, 1986, removed from his personal record." (MW-86-49 CB)

OPINION OF BOARD:

As a result of charges dated September 22, 1986, investigation commencing on October 9, 1986, and letter dated October 17, 1986, Claimant, a Welder with the Carrier since July 31, 1978, was dismissed from service for misuse of Carrier equipment, giving false information in a statement to the Carrier and conspiring in giving false information that resulted in the dismissal of another employee.

Based upon information supplied to it, the Carrier attempted to determine if Claimant or other employees used Carrier equipment for personal purposes. In a written statement signed by Claimant on January 27, 1986, Claimant specifically denied using the Carrier's bulldozers, front end loaders or dump trucks for his own personal use. Claimant further denied receiving permission from employee R. L. Griffin to use such equipment and further denied ever being at Griffin's house or knowing where Griffin lived.

The Carrier concluded that another employee, B. G. Batemon, was in violation of Rule 607 and Batemon was then dismissed from service. That action was taken after Claimant testified at Batemon's investigation. Batemon has since been reinstated.

In another statement given by Claimant on September 17, 1986, Claimant contradicted his January 27, 1986 statement. In his second statement, Claimant admitted that he asked Griffin if he could use a backhoe and dump truck and thereafter went to Griffin's house and picked up and used the equipment. Claimant further stated that he later called Griffin, learned there was an investigation by the Carrier and met with Griffin and both decided to stay with a story that would keep them from getting fired.

At the investigation in this matter, Claimant changed his story again. Claimant testified that his second statement was false and his first statement was correct. According to Claimant "On September 17, 1986, I did write out a false statement ... All I can say is I made out and signed a false statement."

We find substantial evidence in the record to support the Carrier's conclusion that Claimant violated Rules 607 (dishonesty); 609 (which prohibits personal use of Carrier property) and 621 (withholding information or failing to give all facts). Evidence in the record sufficiently shows that Claimant in fact used Carrier equipment. Further, evidence in the record conclusively demonstrates that Claimant thereafter gave false information to the Carrier concerning that use and made agreements that ultimately resulted in Batemon's dismissal.

To find otherwise would require us to make a different credibility determination than that made by the Hearing Officer. It is well-established that credibility determinations are for the Hearing Officer and we may not disturb such a determination unless the record demonstrates that the Hearing Officer's finding is manifestly unsupported by the evidence. Here, Claimant gave differing statements and then testified that his last given statement was false. We find no reason in this record to set aside any determination of the Hearing Officer that Claimant was not truthful. Indeed, when Claimant admitted that his first

statement was false and then testified that his second statement was false, Claimant twice admitted that he was less than truthful.

The Organization's arguments do not change the result. First, our determination that substantial evidence exists in the record to support the conclusion that the Carrier's rules were violated comes from the evidence discussed above. Therefore, the fact that statements were received from another employee as opposed to testimony or that the result of a polygraph test taken by that employee was also received in evidence is immaterial to the outcome of this matter and we have afforded those documents no weight in our determination.

Second, we similarly find no support for the argument that Claimant was forced to give false testimony or evidence.

Third, we do not find that the charges against Claimant were vague and confusing. The charges were sufficient to put Claimant on notice of the allegations against him so as to permit him to prepare his defense. Nor would the fact that the charges against two employees were combined require a conclusion that Claimant was not treated fairly. Nothing in the Agreement prohibits such a procedure and there has been no demonstration that Claimant was prejudiced thereby. Similarly, we do not find that the charges were untimely brought. The charges were brought within sixty days of knowledge of the incident as contemplated by Article 14 (D). The Carrier gained the knowledge that formed the basis of these charges as of September 17, 1986 when Claimant gave his second statement. The charges were issued on September 22, 1986 and were thus well within the sixty day period.

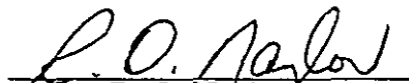
However, we are of the opinion that dismissal in this case was excessive. Nothing in the record indicates that Claimant's disciplinary record was such that dismissal was warranted. Although Claimant's conduct in this matter cannot be justified, we believe that a suspension will serve to correct Claimant's actions. We shall therefore require that


Claimant be returned to service with seniority and other benefits unimpaired but without compensation for time lost.

**AWARD:**

Claim sustained in accordance with Opinion. Claimant shall be returned to service with seniority and other benefits unimpaired but without compensation for time lost.

  
Edwin H. Benn, Chairman  
and Neutral Member

  
R. O. Naylor  
Carrier Member

  
S. A. Hammons, Jr.  
Organization Member

Houston, Texas  
June 30, 1988