

SPECIAL BOARD OF ADJUSTMENT NO. 280

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

AWARD

STATEMENT OF CLAIM:

"1. Carrier violated the effective Agreement when North of Texarkana Track Foreman V. L. Watts was unjustly dismissed from service.

2. Claimant Watts shall now be paid for all time lost commencing November 13, 1986, and on a continuing basis, with seniority, vacation and all other benefits due him restored intact." (MW-87-6-CB)

OPINION OF BOARD:

Claimant, a Foreman, holds a seniority date of May 6, 1970. By letter dated November 18, 1986, Claimant was advised that he failed to comply with the conditions of a reinstatement agreement dated August 7, 1986 and was in violation of Rule 607. After investigation held on December 16, 1986 and by letter dated December 17, 1986, Claimant was dismissed from service.

After an on duty vehicle accident on July 16, 1986, Claimant consented to a drug/alcohol screen which indicated a positive presence of alcohol. Thereafter, by letter dated July 29, 1986, Claimant was suspended from service and charged with a Rule G violation. On August 7, 1986, Claimant waived his right to an investigation and accepted a ten day suspension and further agreed, in writing, to the following conditions:

- "a. V. L. Watts will immediately contact Employee Assistance Counselor K. Y. Neal and will comply with all programs and conditions designated by her.
- b. V. L. Watts will meet monthly with Employee assistance Counselor.

- c. Upon release by Employee Assistance Counselor, V. L. Watts will report for duty on a regular basis unless complying with programs specified by Employee Assistance Counselor, absent for illness, or other justifiable cause.
- d. V. L. Watts will submit to and satisfactorily pass physical examinations and/or drug/alcohol screens as directed by Employee Assistance Counselor, Superintendent or Division Engineer.

The above conditions will remain in effect for one year or as amended by agreement between Vice Chairman and Division Engineer. Failure to comply with the conditions as set forth above, except for circumstances judged by Employee Assistance Counselor to be extenuating, will result in V. L. Watts being dismissed from the services of the St. Louis Southwestern Railway Company without recourse.

Ms. K. Y. Neal, Employee Assistance Counselor ... will be the contact party to ascertain, and report on V. L. Watts compliance with the above stated conditions on a monthly basis."

Claimant completed a one month chemical dependency rehabilitation program at Restore Unit in Little Rock, Arkansas on September 16, 1986. Upon completion of the program, Claimant agreed to aftercare treatment for a one year period consisting of attendance at a minimum of two Alcohol Anonymous or NA meetings per week and weekly out-patient counseling at the Restore Unit. Notwithstanding the treatment agreement, Claimant missed aftercare meetings on October 17, 24, 31 and November 7, 1986. Further, Claimant could not document to the Employee Assistance Counselor that he attended Alcoholics Anonymous or NA meetings, which documentation was required as part of the treatment plan.

Claimant does not dispute the basic facts. However, Claimant asserts that he was unable to meet his obligations under the agreement because:

"When I started back to work I was working in Brinkley I had to work a month before I event got a paycheck. I was staying in Brinkley and I had to pay my expenses up there and I didn't have the money to drive from Brinkley to Little Rock and then come home every Friday evening. And she had the AA meetings here in Pine Bluff and I'm staying in Brinkley and I couldn't come down here twice a week and go back to Brinkley because I didn't have the money to buy gas."

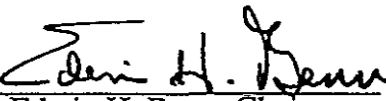
This case presents a similar set of facts to that discussed by us in Special Board of Adjustment No. 280, Award No. 219. Here, Claimant signed a settlement agreement which clearly provided that failure to comply with its terms "will result in V. L. Watts being dismissed from the services of the St. Louis Southwestern Railway Company without recourse." Incorporated into that agreement was the aftercare plan that Claimant admittedly did not comply with. The Organization's argument that Claimant substantially complied with the terms of the Agreement but faced transportation difficulties because of the distances involved is really an argument that extenuating circumstances existed to excuse Claimant's non-compliance. However, as noted in Award 219, supra:

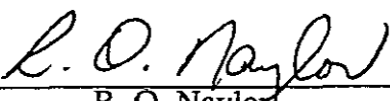
"Moreover, Claimant's assertion that he did not have adequate transportation to get him to the required meetings is no reason to change the result in this case. The agreement required Claimant to attend the meetings. It did not require attendance only if Claimant had transportation. In any event, despite all of the reasons offered by Claimant for non-compliance, the October 28, 1985 agreement specifies that extenuating circumstances are to be judged by Employee Assistance Counselor Neal. Neal has not determined Claimant's excuses to be extenuating. In light of the authority given to Neal in this regard, we are in no position to determine otherwise. Under the circumstances, we find no basis to disturb the Carrier's rejection of those excuses. Under the terms of that agreement, Claimant's failure to comply with the specified conditions permitted his removal from service. The Carrier's action falls within its prerogative under the terms of that agreement."

We therefore have no grounds to set aside the Carrier's action in this case and the Claim must be denied.

AWARD:

Claim denied.


Edwin H. Benn, Chairman
and Neutral Member


R. O. Naylor
Carrier Member


S. A. Hammons, Jr.
Organization Member