

SPECIAL BOARD OF ADJUSTMENT NO. 280

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

STATEMENT OF CLAIM

1. Carrier violated the effective Agreement when Welder Helper W. C. Dancer, Jr. was unjustly dismissed from service.
2. Claimant Dancer shall now be paid for all time lost, beginning July 8, 1987, and on a continuing basis with seniority, vacation, and all other benefits restored to him and with charge letter of July 8, 1987, removed from his personal record. (MW-87-46-CB).

OPINION OF BOARD

As a result of charges dated July 8, 1987, investigation held on July 23, 1987 and by letter dated July 28, 1987, Claimant, a Welder Helper employed by the Carrier since May 1984, was dismissed from service for insubordinate conduct in violation of Rule 607.

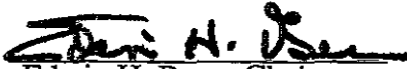
On July 7, 1987 Claimant injured his ankle while handling tie plates. Shortly before 4:00 p.m., Division Engineer M. R. Baker instructed Claimant to report to an emergency room for examination and testing. Claimant admittedly refused to do so on grounds that he had been working from 7:45 a.m. until 3:45 p.m. and "I felt that the injury was not severe enough to require medical attention." Claimant told Baker that if on the following morning the injury was not better he would seek medical attention at that time. Upon Claimant's refusal to comply with Baker's instructions, Claimant was removed from service pending investigation.

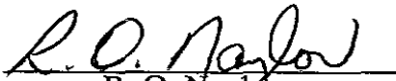
Substantial evidence exists to support the Carrier's determination that Claimant violated Rule 607 which prohibits insubordinate conduct when Claimant refused to follow Division Engineer Baker's instruction to report to the medical facility. However, under the circumstances, we find imposition of dismissal to be excessive. In making that

determination and taking into account the particular circumstances of this case, we note that there is no indication that Claimant's record demonstrates that he has been a disciplinary problem. Therefore, Claimant shall be returned to service with seniority unimpaired but without compensation for time lost. Return to service shall be subject to Claimant passing a return to service physical examination.

AWARD

Claim sustained in part. Claimant shall be returned to service with seniority unimpaired. Return to service shall be without compensation for time lost and shall be subject to Claimant passing a return to service physical examination.


Edwin H. Benn, Chairman
and Neutral Member


R. O. Naylor
Carrier Member


S. A. Hammons, Jr.
Organization Member

Houston, Texas
January 31, 1990