SPECIAL ADJUSTMENT BOARD NO. 947

Claimant - S. E. Schoenthal
Award No. 94
Case No. 94

PARTIES TO DISPUTE

Brotherhood of Maintenance of Way Employes
and
Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM

That the Carrier's decision to dismiss Claimant, S. E. Schoenthal from its service was excessive, unduly harsh and in abuse of discretion, and in violation of the terms and provisions of the current Collective Bargaining Agreement.

That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to reinstate and compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, I find that the Parties herein are Carrier and Employes within the meaning of the Railway Labor Act, as amended, and that this Special Board of Adjustment is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

By letter dated February 10, 1988, the Claimant was notified to be present at a formal investigation to be held at the office of the Division Engineer on March 2, 1988, to

determine whether or not he had violated Rule 604 of the Rules and Regulations of the Maintenance of Way and Structures, when he allegedly failed to protect his assignment on Tie Gang #9, at Pittsburg, California on February 3, 4, 5, 8, 9, 10, 1988. That portion of the Rule allegedly violated reads:

> Rule 604, Duty - Reporting or Absence:
>
> Employes must report for duty at the designated time and place. They must devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties, or substitute in their place without proper authority.

The Carrier believed the evidence brought forth at the hearing proved the Claimant had violated the cited rule. On March 18, 1988, they sent him a letter notifying him of his dismissal.

On February 3, 1988, the Claimant contacted his Roadmaster, R. R. Arroya, to request one day of sick leave. He was granted the one day, but was advised he would only be granted one day because he had missed too many days. The Claimant called again on February 5, 1988, around 8:00-8:30 a.m., to request one week's vacation. The Roadmaster was not in the office, but the call was taken by R. L. Foster, Curb Lubricator, who happened to be taking calls for the Roadmaster. Upon hearing the Claimant's request, he advised the Claimant he was not authorized to grant time off, therefore, he would have to call back and make the request of the Roadmaster. The Claimant never called back to talk to Arroyo and did not show up for work. The next day the Roadmaster attempted to contact the Claimant, but was

unsuccessful. The Claimant did not attend work after that and did not respond to a charge letter which was sent via certified mail on February 10, 1988 to the Claimant's last listed address.

There is sufficient evidence that the Claimant was absent without authority on February 5-10, 1988 and subsequent days thereafter. In addition, the Claimant failed to attend the investigation. His absence, either from work or from the actual investigation, cannot be excused because the Company did not have the Claimant's correct phone number or correct address. The Company met their obligation to notify the Claimant when they called his last known phone number and sent a certified letter to his last known address. It is the employee's obligation to be certain his/her employer has their correct phone number and address. They are expected to be accessible for emergencies and for normal employer contacts. The employer cannot be held accountable for its inability to contact an employee who neglects to make his employer aware of his location. In this case, the Claimant could have at least, left a phone number with the Curb Lubricator on February 5, 1988. He did not. The Union was properly notified and it was the Claimant's responsibility to prove he had an acceptable reason for not attending the hearing or responding to the Carrier's notifications.

This Board may have been willing to review any mitigating circumstances raised by the Employee if he had chosen to be available at the hearing. He allowed the Union little recourse in providing a defense.

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AWARD

The claim is denied.

Carol J. Zamperini
Neutral

Submitted:

January 22, 1990
Denver, Colorado