

SPECIAL BOARD OF ADJUSTMENT NO. 957

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

"CARRIER"

and

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

"ORGANIZATION"

Award No. 10

STATEMENT OF CLAIM:

Claim of the Brotherhood (BMWE-86-17-F12) that:

The dismissal of Track General Helper Ronald Tann was without just and sufficient cause and was arbitrary and capricious.

REMEDY:

The Claimant shall be reinstated without loss of compensation, including overtime, and without loss of seniority and other contractual benefits and privileges that Claimant enjoyed prior to his dismissal.

OPINION OF THE BOARD

Claimant, R. Tann, was discharged on July 22, 1985 for being absent without leave (AWOL). The Organization seeks the Claimant's reinstatement without loss of compensation.

The arbitration hearing in this matter took place on August 26, 1987. Claimant was present and represented by the Organization.

The basic facts are not complex. Claimant was scheduled to work on June 30, 1985. He did not, however, appear for his scheduled shift. The parties now dispute whether Claimant provided to the Carrier proper notification of his absence. The Carrier maintains that it received no notification concerning Claimant's absence prior to the end of his scheduled shift on June 30, 1985. The Organization maintains that Claimant's wife did contact Carrier's guard concerning his absence prior to the end of his shift.

The basic facts concerning the processing of the Claimant's claim are also not complex. The Organization submitted a timely claim which Carrier denied through the second step of the grievance procedure. Carrier refused, however, to hold a third step grievance hearing. This refusal was based upon Carrier's belief that Claimant had refused to "settle all accounts," as he had never replaced an employee rail pass which he had previously lost. The rail pass is a benefit afforded all employees, and costs \$100 to replace.

The Carrier maintains that this claim is improperly before the Board. It argues that under Article IV, Section 401(i) of the contract, a claim will not be processed past the second step of the grievance procedure when an employee fails to settle all accounts. In addition, the Carrier argues that under Work Rule 24 the Claimant's AWOL on June 30, 1985 provided proper grounds for discharge.

The Organization contends that this claim is properly before the Board. It argues that it is ludicrous for the Carrier to assert that Claimant must pay \$100 to replace his rail pass after he has been discharged. Furthermore, the Organization argues that

Claimant was not AWOL, as his wife provided proper notification of his absence on June 30, 1985, and all subsequent days of absence were for medical reasons.

Work Rule 24, cited by parties, states:

24. A.W.O.L.

An unexcused employee who fails to report before the finishing time of his regular day's work, shall be classified as absent without leave (AWOL) and shall be subject to discharge.

Article IV, section 401(i) of the Agreement, cited by the parties, states:

(i) In any case where an employee has been discharged, the hearing at the second step of the grievance procedure will not be held until the employee has turned in all property theretofore delivered to him and the hearing at the third step will not be held until the employee has settled all accounts.

The Board has determined that this claim is properly before it. Claimant has not run afoul of Article IV, Section 402(i) of the Agreement by failing to pay Carrier \$100 to replace his lost rail pass prior to the third step grievance hearing. Where, as here, an employee has been terminated, it makes little sense for his pass to be replaced prior to resolution of his claim when it was previously lost prior to termination. Although the Carrier strenuously argues that the \$100 fee is in effect a penalty for losing the pass, this position is not supported by language used in either the Work Rules or on the pass itself. That language supports the Carrier's position that the \$100 is a replacement fee, not a penalty.

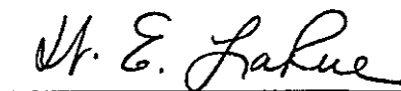
The Board has further determined that the Claimant should be reinstated with full seniority, but without back pay and other benefits. Reinstatement is appropriate, as Claimant apparently


intended to provide proper notification for all days of his absence. Such intent was evident from the undisputed fact that Claimant called Carrier prior to the June 30 shift and further provided notification of his absence on days subsequent to June 30. Moreover, Claimant was apparently detained by police during his June 30 shift. Back pay is not appropriate, however, as it does not appear that Claimant's wife did in fact provide proper notification on June 30. Carrier's records contain no recording of such notification and Claimant's wife did not testify at the hearing. As Claimant delegated to his wife notification responsibility, it follows that he must bear the serious consequences of her error, which resulted in him being AWOL on June 30.

AWARD

The claim is sustained in part. Carrier shall reinstate Claimant with full seniority, but without back pay and other benefits lost during the period of his termination. Prior to reinstatement, Claimant shall pay Carrier \$100 replacement fee for his lost rail pass.


 R. B. BIRNBRAUER
 Carrier Member


 W. E. LaRUE
 Organization Member


 S. E. BUCHHEIT
 Neutral Member