

SPECIAL BOARD OF ADJUSTMENT NO. 957

SOUTHEASTERN PENNSYLVANIA :
TRANSPORTATION AUTHORITY :
"AUTHORITY" :
vs. : AWARD NO. 29
BROTHERHOOD OF MAINTENANCE :
OF WAY EMPLOYES :
"ORGANIZATION" :

STATEMENT OF CLAIM:

Claim of the Brotherhood (BMWE-88-10-F12) that:

The dismissal of Track General Helper E. Archie for violation of Facilities Department Rule 43 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 all those other contractual benefits and privileges the Claimant enjoyed prior to his dismissal.

OPINION OF THE BOARD

Claimant, E. Archie, was discharged on May 2, 1988 for allegedly being in violation of Work Rule No. 43, which concerns absence from one's work location.

The basic facts are not complex. On April 29, 1988, Claimant was assigned as a flagman to protect a contractor's crew working at 20th Street near Suburban Station. Claimant's foreman, S. Wilson, was alerted that something was not in order when a train passed him without blowing his whistle. The whistle was to be blown in accordance with the Whistle Board, to alert

any workmen on the tracks. Foreman Wilson then attempted to contact Claimant via radio to inquire if the whistle board had fallen down. When Wilson received no reply from the Claimant, he proceeded to Claimant's work location and discovered Claimant was not present. Wilson told members of the contractor's crew, who were present at the location where Claimant was supposed to be, to have Claimant contact him whenever he returned. Approximately 40 minutes later, Claimant called the foreman by radio and a face to face meeting subsequently took place between Claimant and Wilson. Claimant claimed that he had been at his assigned location when Wilson was looking for him. Wilson contended that Claimant could not have been there, and further told Claimant that while he needed Claimant to work the rest of the evening, he would advise his superiors of Claimant's absence from his work location. Claimant then turned over his radio to Wilson and left. Approximately 15 minutes later, Claimant returned to Wilson and attempted to further discuss the situation. Wilson informed Claimant that discussion was closed. Claimant then left the work site for the evening, and work resumed without him. Claimant was subsequently discharged by the Authority for violation of Work Rule 43, which reads:

Unauthorized absence from one's assigned work area and/or Authority property as well as being absent without permission from one's assigned work location are dischargeable offenses.

The Authority contends that Claimant's discharge was proper, as he absented himself from his assigned work location without authorization on two occasions. According to the Authority,

Claimant's irresponsible actions placed the safety of the contractor's crew and Authority property at risk. The Authority further maintains that Claimant relinquished his position when he turned in his radio and left his work location.

The Organization asserts that proper grounds did not exist for the Claimant's discharge. According to the Organization, the Authority has not established that Claimant was improperly absent from his work location. Moreover, the Organization believes that even if Claimant was absent from his work location, it was not as serious as the Authority contends, as work resumed for the remainder of the evening after Wilson sent Claimant home. Finally, the Organization maintains that when Claimant handed his radio to Wilson and walked away, he was merely calming down, so as to not engage in an argument with Wilson.

The Board determined in executive session on October 7, 1988 that the claim should be sustained in part and the Grievant immediately be returned to work without back pay. The Board's reasoning was as follows.

The Board was convinced by the credible testimony of Foreman Wilson that Claimant was not at his assigned location on April 29. The Board also concluded that Claimant's failure to cover his assignment did indeed violate Rule 43, and was a serious breach of his responsibilities in light of the personal or property damage that could have resulted.

The Board further concluded, however, that in light of arguments of mitigation raised by the Organization, and the

Claimant's statement at the Board hearing that he badly wants to return to work, the Claimant should be given a last chance reinstatement. The Claimant must fully understand that any further violation of Authority rules will in all likelihood result in his discharge. The Board expressly warns the Claimant that it does not want to see a case involving him placed before it again.

AWARD

Claim sustained in part consistent with the above Opinion.



R. B. BIRNBRAUER
Authority Member



W. E. LA RUE
Organization Member



S. E. BUCHHEIT
Neutral Member