

SPECIAL BOARD OF ADJUSTMENT NO. 140

PARTIES United Transportation Union
TO
DISPUTE: and

Chicago, Milwaukee, St. Paul and Pacific
Railroad Company

STATEMENT Reinstatement Chicago Terminal Freight yard
OF CLAIM: Switchman D. E. Gibson with seniority and
all other rights and privileges unimpaired
and pay for all time lost who was dismissed
August 11, 1978.

FINDINGS: By reason of the Agreement between the parties and
all the evidence in the record, Special Board of
Adjustment No. 140 finds that the parties are employees and
carrier as defined in the Railway Labor Act, as amended, and
that it has jurisdiction.

Claimant was dismissed from service on August 11, 1978
because he allegedly consumed alcoholic beverages prior to
reporting for duty on July 23, 1978. He was reinstated as an
employee of the Carrier in a letter addressed to him dated
September 6, 1978. Because of a physical disability he was
also then advised that he was unable to work and that before
returning to service he will need to furnish the Carrier with a
detailed physician's statement of his diagnosis, prognosis and
an evaluation of his ability to perform his regular assigned
duties. The record before this Board contains no medical
evidence that the Claimant, at anytime since his reinstatement,
was or is now able to return to work and perform the usual
and customary duties of a switchman.

Article 9, Section (h) of the Agreement between
the parties provides that a "True and correct stenographic
record will be taken at all investigations held under this
Article and a complete transcript of all proceedings in all
cases shall be given to the representative upon request."

A true and correct stenographic record was never taken at the investigation. Carrier's tape recorder failed to record approximately thirty (30) minutes of testimony.


For this reason, the Board finds that the Carrier did not fully comply with the provisions of Article 9, Section (h). The Board also finds that since he has been reinstated, he is entitled to lost earnings from July 23, 1978 to September 6, 1978.

AWARD

Claim sustained in accordance with the findings. The Carrier is directed to pay the claim within thirty (30) days of the date of this award.


DAVID DOLNICK, Chairman and Neutral Member


C. F. CHRISTIANSEN, Employee Member


P. E. O'CONNOR, Carrier Member

DATED: December 21, 1982