

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23123
Docket Number MW-23232

A. Robert Lowry, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company
(Texas and Louisiana Lines)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Apprentice Foreman Mark C. Pollard was without just and sufficient cause (System File MW-79-37).

(2) Mark C. Pollard shall be reinstated as an apprentice foreman with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Mr. M. C. Pollard, the Claimant, was employed by the Carrier on September 10, 1976, immediately prior to the incident involved here, he was assigned as an Apprentice Foreman on Extra Gang No. 222. On January 17, 1979, the Carrier addressed a letter to Claimant, charging him as follows:

"You have been absent without authority since January 2, 1979. This is in violation of Rule M810 of the rules and regulations of the Southern Pacific Transportation Company as posted by General Notice, effective April 1, 1978. Rule M810 is quoted in part as follows:

'Employees must report for duty at the prescribed time and place They must not absent themselves from their employment without proper authority

Continued failure by employees to protect their employment shall be sufficient cause for dismissal '

You are dismissed from the service of the Southern Pacific Transportation Company for your violation of Rule M810. Please return all company property which is in your possession to Roadmaster J. W. Duke at 1314 Semmes Street, Houston, Texas."

Claimant requested and was granted a hearing in accordance with the provisions of Article 14 of the Agreement between the parties on February 14, 1979. He was represented by a duly accredited representative, his General Chairman. A copy of the transcript was made a part of the record. A careful study of the transcript reveals Claimant was given a fair and impartial hearing.

The record is clear, Claimant was absent without authority from his assigned position during the period in question, but he contended throughout the hearing that he was absent because he was in fear of his life.

Claimant in his defense contended threats on his life commenced on May 15, 1978, apparently when he was advanced to the position of Apprentice Foreman, while assigned to Extra Gang No. 64. He testified the threats were made in the presence of Foreman Reyes, Assistant Roadmaster Morrow and Roadmaster Duke, with no action taken. He was, however, transferred to Extra Gang No. 222 but this gang worked in close proximity to Gang No. 64 and the threats continued. He also stated in the hearing that he was threatened in Roadmaster Duke's office and in his presence. None of this testimony was refuted by the Carrier. There is no testimony or evidence in the record as to the nature of the threats or harrassment, nor by whom. This Board finds it strange that Carrier would knowingly condone anyone threatening the life or harrassing one of its employes, and for this we fault the Carrier. We subscribe to the Board's wisdom when it said in Award 18799:

"This Board has never required any working man needlessly to put his life in jeopardy as a condition of continuing employment and will not do so here."

The Carrier, in its defense, indicated in the record that it had talked to the employes in Gang No. 64 and offered to allow Claimant to return to a position of labor-driver in that gang but he declined with the statement that he would be under the supervision of an Apprentice Foreman who had been promoted in his absence and who had been directly involved with the harrassment. The record shows he made numerous complaints to his supervisors about this harrassment but it apparently continued to plague him in his employment.

In October, 1978, the record indicates, Claimant made a request to transfer to train service, and, during the hearing, in response to a question from his representative if he desired to work in the Maintenance of Way Department, he made the following statement:

"It is my desire to have the falsehoods removed from my record in regard to my dismissal and that I be retained in the service of the Southern Pacific Transportation Company under a status of leave of absence until I am transferred as per transfer turned in October 2, 1978."

It is obvious to this Board that Claimant does not wish to return to work in the Maintenance of Way Department and for this reason it would serve no useful purpose to reinstate his seniority in that craft and class. The Board, however, awards the restoration of Claimant's employment relations with the Carrier without seniority and without back pay inasmuch as he refused to work when offered a position other than Apprentice Foreman, but with his record cleared of this charge. This employment relationship shall continue for a period of one year from the date of this Award to enable Claimant to pursue his transfer to another department of the Carrier. This Award shall not operate to affect in any manner Carrier's determination with respect to Claimant's qualifications for employment in other departments, except to consider his application in the same manner as any other employes with a clear record. At the end of the one year period if Claimant's transfer has not been accepted his employment relations shall be terminated unless Carrier elects to extend it.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1981.

