

PUBLIC LAW BOARD NO. 1925

Award No. 1

Case No. 1

File No. MW-76-2

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company  
-Texas and Louisiana Lines-

Statement of Claim: 1. Carrier violated the Agreement when it unfairly improperly and without just cause dismissed from Carrier's service Extra Gang Laborer E. A. Alexander, on December 30, 1975.

2. Claimant Extra Gang Laborer E. A. Alexander be reinstated to Carrier's service, with all seniority rights, vacation and other rights unimpaired, and pay for all time lost on account of Carrier's action as noted in Part 1 of this Claim.

Findings: The Board finds, after hearing upon the whole record and all evidence, that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 23, 1977, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Gang Laborer Alexander was regularly assigned on December 30, 1975, to Extra Gang No. 372 headquartered at Skidmore, Texas. Claimant and other members of his crew were transported via truck to Beeville on December 30 to temporarily work with Extra Gang 64, under the supervision of Extra Gang Foreman B. L. Reinhardt in

rebuilding road crossings at Beeville.

Claimant and three other laborers were instructed to pull out the old ties with their tie tongs. As a result of their stopping work, drinking water and talking amongst themselves, Foreman Reinhardt told this group to stop talking and get back to work. Claimant allegedly threw down his tongs and walked away. He then came back at which time he was told to see the Roadmaster as he was not needed any more. Claimant allegedly became hostile and abusive and called the Foreman a profane name (questioning his parentage). Claimant was advised by the Roadmaster to leave the Company premises.

January 2, 1976, Grievant was dismissed from service for his insubordinate and quarrelsome behavior on December 30, 1975, refusing to perform his duties as instructed and after being previously cautioned about such type behavior. His conduct was held to be in violation of Rule 801. An investigation was requested and granted. As a result of the evidence adduced thereat, Carrier concluded that Claimant was guilty as charged.

The Board's function in disciplinary matters is that of an Appellate body. It reviews the entire record established on the property to determine whether (1) the due process provisions in the Labor Agreement were observed during the discipline proceedings; (2) if found guilty, the finding is supported by substantial evidence; and

(3) the discipline assessed was excessive for the offense.

The Board finds that Claimant was accorded due process. He was given a hearing upon request, was ably represented, had the right to present witnesses, faced his accusers, was furnished a transcript and exercised his right of appeal.

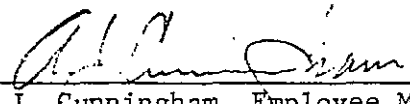
It is found that there was sufficient credible evidence adduced to support Carrier's conclusion as to Claimant's culpability. It reflects that Carrier had just cause.

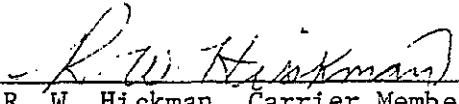
The Board also finds that dismissal is a penalty generally considered as being appropriate for insubordination. However, it does find that there are circumstances present herein which serve to mitigate the discipline imposed. Claimant does not speak English, and he was away from his regular Foreman, who never had had any problems with Claimant; he was on a different working district and was like the proverbial fish out of water. Claimant has now been out of service some twenty (20) months. His service record is otherwise good and he has evidenced a desire to work for this Carrier. Therefore, the Board finds that Claimant, subject to passing the usual return to service physical examination, should be restored to service with his seniority rights unimpaired but without any pay for the time held out of service. Further, that consideration be given to placing him on a working territory with supervision

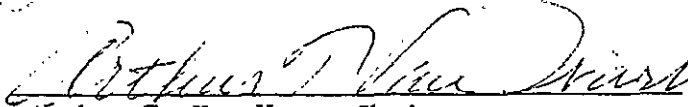
different from that involved herein where Claimant's working environment will be decidedly more homogeneous and compatible.

Award: Claim is disposed of as per finding.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

  
A. J. Cunningham, Employee Member

  
R. W. Hickman, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Falmouth, Massachusetts, September 1, 1977.