

PUBLIC LAW BOARD NO. 1925

Award No. 18

Case No. 18

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 effective Agreement when it unfairly and without just cause dismissed from its service, on November 5, 1976, Assistant Foreman Jerry Hammers.

2. Claimant shall be reinstated to his former position with all seniority, vacation rights, insurance coverage and any other rights due him unimpaired, in addition to all compensation lost commencing November 5, 1976, and to run concurrently until Claimant Hammers is restored to the services of the Southern Pacific Transportation Company.

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 was an Assistant Foreman in Carrier's Lufkin District. He was dismissed by his Division Engineer, November 5, 1976, for falsifying his expense account ending September 20, 1976, which claim covered dates in August and September 1976. His act resulted in a violation of Rule 801 of the General Rules and Regulations for the Maintenance of Way and Structures.

Rule 801, in pertinent part, provides:  
"Employees will not be retained in service who are.....dishonest..."

An investigation, as requested by Claimant, was subsequently held. As a

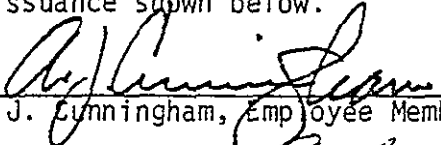
result thereof the discipline of dismissal was upheld.

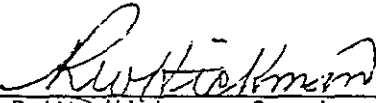
Claimant was accorded due process.

The evidence adduced reflects that sufficient competent evidence was adduced to support Carrier's conclusion as to Claimant being guilty of falsifying his expense account. Claimant's testimony corroborated the allegations made. However, like the Claimants in this Board's Award Nos. 14 and 15 Claimant's action was not willfully undertaken to defraud Carrier. Claimant acted in response to a suggestion by his Roadmaster, apparently made that in order to offset his automobile expense occurred in use thereof in connection with its use and maintenance pertinent to Carrier business, to file a lodging expense therefor. However, such improper act was a transgression of Rule 801 whether technical or otherwise. Claimant had no right to violate the expense account regulations notwithstanding its purpose or source. As in Award Nos. 14 and 15 it is noted that the expense instructions are vague. Yet, it appears clear that the transgression was not willfully undertaken or intended to defraud the Carrier. Claimant has now suffered enough and has learned a lesson therefrom. Claimant has a clear service record. Therefore, he will be reinstated to service with all rights unimposed but without pay for all time out of service subject to his passing a return to service physical examination. Specific reference to the word "dishonesty" on his service record should be expunged therefrom.

Award: Claim disposed of as per findings.

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

  
A. J. Cunningham, Employee Member

  
R. W. Hickman, Carrier Member

  
Arthur J. Van Wart, Chairman  
and Neutral Member