

PUBLIC LAW BOARD NO. 1925

Award No. 7

Case No. 7

File No. MW-76-98

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 by failing to give a fair and impartial hearing to Roadway Machine Operator L. J. Tolliver on October 11, 1976, held because of his dismissal upon the charge that he was dishonest with Mr. V. O. Tekell, Division Engineer, on Wednesday, September 22, 1976.

2. Carrier failed to prove the charge against Claimant Tolliver.

3. Claimant Roadway Machine Operator L. J. Tolliver shall now be reinstated and paid for all time lost, beginning September 22, 1976, until date of reinstatement; this charge be stricken from his record and that all seniority, vacation, Traveler's Insurance, and other rights be restored to him, on this account.

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, a Roadway Machine Operator, was dismissed September 27, 1976, for being dishonest with his Division Engineer concerning a personal injury resulting in a violation of Rule 801 of General

Notice, General Rules and Regulations of Southern Pacific Transportation Company effective April 1, 1974. Claimant had previous to September 22 1976, told his Division Engineer that his absence from work from June 22 until August 13, 1976, was not because of any on-the-job injury. However, on September 22, Claimant for the first time said that his absence was because of an on-the-job injury which he was now claiming. The Rule cited provides:

"General Regulations:

"801 Employees will not be retained in the service who are ... dishonest..."

Claimant had his hearing as requested with no change in discipline as a result thereof.

The Board finds no egregious error to vitiate a review of the merits of the case.

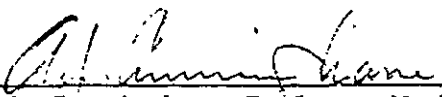
There was sufficient evidence adduced to show that Claimant had given two different reasons for his being off for a prolonged period of time; one version being that he had not suffered an on-duty injury, and the other version that he had. The latter version was given on September 22nd to his Division Engineer who therefor concluded that Claimant, because of their previous conversations, had lied, misled or deceived him and thus that he therefore had not been honest. The Board finds no quarrel with such conclusion especially when Claimant tacitly admits of same with his testimony

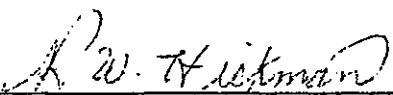
that he must have been drunk when he said that he had not been injured.

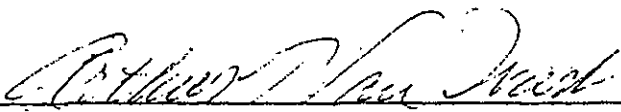
However, the Board finds mitigating circumstances in the record to warrant restoration of Claimant to service but without any pay for time held out of service, with his seniority rights unimpaired, and subject to a return to service physical examination. The Board also recommends that the Division Engineer involved should become more familiar with Article 14 and the obligations thereunder by reviewing same with his Labor Relations Personnel.

Aware: Claim disposed of as per finding.

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 T. Van Wart, Chairman  
and Neutral Member

Issued at Falmouth, Massachusetts, September 7, 1977.