

Award No. 1

Case No. 1

Docket No. MW-77-72

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company
-Texas and Louisiana Lines-

Statement of Claim 1. Welder Helper R. L. Myers was dismissed without just or sufficient cause and on the basis of unproven charges.
2. Claimant Myers shall be reinstated to service with pay for all time lost and with vacation, insurance, seniority and all other rights unimpaired.

Findings The Board, after hearing upon the whole record and all evidence, finds 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 May 22, 1978, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, former Welder Helper, Robert L. Myers, Jr., was dismissed by letter dated May 4, 1977, for his failure to obey a direct order from his supervisor at 3:45PM, May 3, 1977. Such failure was in violation of Rule 801 of the Rules and Regulations of the Maintenance of Way instructions of the Southern Pacific Transportation Company.

Claimant had been working with B&B Gang No. 11 on a bridge at Des Allemands, Louisiana on May 3, 1977. About 3:45 PM that date his Supervisor, Mr. J. B. Cantu, gave Claimant a direct order to pick up welding leads from on the bridge and Mr. Myers refused to do so.

Claimant requested an investigation which was granted. The hearing was held May 20, 1977 and from the evidence adduced therein Carrier concluded Claimant guilty as charged and he was so advised by his Division Engineer. Rule 801 provides in part as follows:

"Employees will not be retained in the service who are...
insubordinate,....quarrelsome..."

The Board finds that Claimant was accorded due process.

Sufficient evidence was adduced to support Carrier's conclusion as to Claimant's culpability.

The Board finds there are mitigating circumstances herein. Claimant has been out of service almost two years. He was considered by everyone, including his Supervisor, J. B. Cantu, to be an excellent worker. There is strong evidence that there was some confusion on the date of incident and it appears clear that there was nothing malicious intended by Claimant's action. He is penitent and desirous of working for the Southern Pacific Transportation Company.

In the circumstances the Board will reinstate Claimant with all rights unimpaired but without any pay, subject to his passing the necessary return to service examination.

Award Claim disposed of as per findings.

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

M. A. Christie
M. A. Christie, Employee Member

R. W. Hickman
R. W. Hickman, Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member