

PUBLIC LAW BOARD NO. 2182

Award No. 5

Case No. 5

Docket No. MW-77-99

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company
-Texas and Louisiana Lines-

Statement of Claim 1. The dismissal of Mr. J. V. Guevara was unjust and unwarranted and the Carrier failed to prove the charges outlined in the dismissal letter of July 18, 1977.

2. That Claimant Laborer Driver J. V. Guevara be reinstated to his former position with pay for all time lost and with vacation, 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, a Laborer-Driver, was dismissed July 18, 1977, as the result of a letter from his Division Engineer reading:

"On July 6, 1977, while working as Laborer-Driver on Extra Gang No. 334 on the Sanderson Roadmaster's District, you were instructed by Track Foreman of Extra Gang No. 334 to pick up trash around the set-offs where the track machines were located, which work you refused to do, being insubordinate, which is in violation of Rule 801 of the Rules and Regulations for the Maintenance of Way and Structures.

On July 7, 1977, while working as Laborer-Driver on Extra Gang No. 334 on the Sanderson Roadmaster's District, you were instructed to tie-up the gang truck when you went off duty at Dryden, which you did not do, but rather tied up the truck up at Sanderson, being insubordinate and showing indifferent to the performance of duty, which is in violation of Rule 801 and 802 of the Rules and Regulations for the Maintenance of Way and Structures.

On July 13, 1977, Roadmaster S. E. Mutz instructed Track Foreman of Extra Gang No. 334 to obtain the gasoline credit cards for the gang truck from you. When Track Foreman of Extra Gang No. 334

instructed you to turn over the credit cards to him, you refused to do so, which is being insubordinate and in violation of Rule 801 of the Rules and Regulations for the Maintenance of Way and Structures.

For your violation of Rule 801 and Rule 802 of the Rules and Regulations for the Maintenance of Way and Structures, you are hereby dismissed from the service of Southern Pacific Transportation Company....."

Said Rules 801 and 802 in pertinent part, read:

"801. Employees will not be retained in service who are.... insubordinate,....any act of hostility...or willful disregard... affecting the interest of the company is sufficient cause for dismissal...."

Claimant asked for and was granted a hearing which was held August 30, 1977. It was concluded, as a result thereof, that the charges were fully sustained and that the dismissal should stand.

The Board finds no cause on this record to change the discipline imposed. The Board's function, as an appellate body, is to review the record established below, to determine whether Claimant was accorded the due process defined in the applicable agreement, ascertain whether sufficient evidence was adduced to support the conclusion reached by Carrier and whether the discipline assessed was unreasonable.

Here there was conflicting testimony which Carrier, as trier of the facts, quite properly determined. It chose to accept the testimony of its witnesses as being the more credible. No showing of animus was made. The record supports Carrier's conclusion. It is clear that Claimant had been insubordinate.

The discipline assessed is held to be reasonable. Insubordination, generally, is a dismissable offense. The principle that when reasonable orders are given by a Supervisor to a subordinate they must be complied with has been too well established in the railroad industry to here need any citation of authority

therefore.

The Board finds that on this record Carrier was neither arbitrary, nor capricious, in asserting dismissal. Claimant's acts of insubordination, as well as the other incidents, cited in the record reflecting an indifferent and poor employe attitude, warranted and justified the discipline assessed. The Claim will be denied.

Award Claim denied.

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

Issued at Wilmington, Delaware, March 31, 1979.