

PUBLIC LAW BOARD NO. 2444

Award No. 1

Case No. 1

Docket No. MW 78-77

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute: Southern Pacific Transportation Company
(Texas and Louisiana Lines)

Statement of 1. Carrier violated the effective Agreement when Laborer Raul Hernandez was unjustly dismissed March 21, 1978.
Claim: 2. Claimant Hernandez shall be reinstated to his former position, with pay for all time lost and with all 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 July 19, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, an extra gang Laborer, on March 21, 1978, was attached to and working with Extra Gang 354. He was called out to assist in changing some broken rail between switches at Sanderson, Texas at 5:00 AM.

After reporting to the job site Claimant entered into an altercation with his foreman about 6:20 AM which resulted in a personal injury to said foreman. Claimant received the following from his Division Engineer, dated March 21, 1978:

"Your action on March 21, 1978 are in violation of Rules 801 and 802 of Rules and Regulations for the Maintenance of Way and Structures; and for your violation of such rules on March 21 you were dismissed from service of Southern Pacific Transportation Company at 7:15 AM, March 21, 1978."

Claimant requested and received a formal hearing thereon which was held April 11, 1978. Thereafter Claimant was advised April 17, 1978:

"In line with your request you were accorded the hearing on April 11, 1978; and my careful review of testimony taken at the hearing revealed the charges were sustained. Therefor, this is to advise that your dismissal from service of Southern Pacific Transportation Company is hereby reaffirmed."

The Company Rules cited read:

"Rule 801. Employees will not be retained in the service who are careless of the safety of themselves or others, insubordinate,.... quarrelsome or otherwise vicious,... Any act of hostility, misconduct ...is sufficient cause for dismissal and must be reported."

"Rule 802. Courteous....

Courteous deportment is required of all employees in their dealings with ... each other.

Employees must not enter into altercations, ...while on duty."

The function of this Board in disciplinary matters is to determine whether Claimant is accorded a fair hearing, to determine whether sufficient evidence was adduced to support the conclusions by the Carrier and to determine whether the discipline assessed was reasonable. In the instant case we find that Claimant was accorded the due process to which he was entitled under his discipline rules.

There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability. Claimant admitted that he had struck his foreman in the face as well as admitting that he had also kicked him in the chest when he was down. While there may be a difference in the number of times that Claimant said he hit his foreman and the number that the foreman said he hit him, the fact remains nonetheless that Claimant had admitted his guilt. The Board finds no provocation so great in the testimony to warrant the vicious action taken by Claimant in striking his foreman.

Claimant having admitted his guilt there is nothing to consider except the degree of discipline imposed. In the circumstances involved, we find the discipline not unreasonable. This claim will be denied.

AWARD: Claim denied.



M. A. Christie, Employee Member



C. B. Goyne, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member