

PUBLIC LAW BOARD NO. 2444

Award No. 11

Case No. 17

Docket No. MW 79-05

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 Track Foreman C. A. Maide was unjustly dismissed September 28, 1978.

2. Claimant C. A. Maide shall be reinstated to his former position with all seniority, vacation rights, insurance coverage, and any other rights accruing to him unimpaired in addition to all compensation lost commencing September 28, 1978, and to run concurrently until Mr. Maide is restored to service.

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 received a letter from his Division Engineer dated September 28, 1978, reading:

"At 3:00 p.m., Wednesday, September 27, 1978 you were instructed by Mr. A. J. Orphan, Project Engineer, to work two hours overtime as instructed and released your gang contrary to instructions. Your actions were in violation of that part of rules 801 and 802 of General Rules and Regulations of General Notice effective April 1, 1978 of Southern Pacific Transportation Company which reads:

- "801. Employees will not be retained in the service who are insubordinate....
802. Indifference to duty, or to the performance of duty, will not be condoned...."

For your being insubordinate and for your being indifferent to duty when you refused to work overtime September 27, 1978, after being instructed to do so, you are dismissed from the service."

Claimant requested and was granted a hearing which was held on October 25, 1978. As a result, Claimant was advised: "This is to advise you that the position as stated in my letter of September 28, 1978 is sustained."

The Board finds that Claimant was accorded due process.

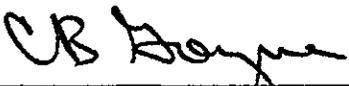
There was sufficient evidence to support Carrier's conclusion as to Claimant's guilt. While the discipline assessed, in ordinary circumstances, would have been reasonable, we find mitigating circumstances in the present case to warrant a modification thereof.

Claimant will be reinstated to service, without pay for time out of service, as a laborer and placed on probation for a six months period. If he successfully passes such probationary period, his rights as a foreman will be reinstated.

Award: Claim disposed of as per findings.

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


M. A. Christie, Employee Member


C. B. Goynes, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey February 7, 1980.