

PUBLIC LAW BOARD NO. 2444

Award No. 20

Case No. 26

Docket No. MW 79-33

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute Southern Pacific Transportation Company
(Texas and Louisiana Lines)

Statement

of Claim: Carrier violated the effective Agreement when Laborer-Driver John F. Joiner was unjustly dismissed by letter dated December 20, 1978.

Claimant John F. Joiner shall be reinstated to his former position with pay for all time lost, with seniority rights, vacation rights and all other rights unimpaired.

Findings: The Board, after hearing upon the whole record and 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, who had been a Laborer-Driver on Extra Gang No. 412 of the Dallas Division Seniority District, received a letter from his Division Engineer dated December 20, 1978, reading:

"You are assigned as Laborer-Driver on Extra Gang No. 412, headquarter in trailers at Austin, Texas. On December 18 and 19, 1978 you were quarrelsome and insubordinate to your foreman during your tour of duty on these dates, as well as being quarrelsome and otherwise vicious to fellow employees while in your assigned trailer on these dates, which is in violation of Rule 801 of Rules and Regulations for the Maintenance of Way and Structures, effective November 1, 1976, as well as Rule 801 of General Rules and Regulations of General Notice, effective October 31, 1976, which rule is quoted:

'Employees will not be retained under service who are careless of the safety of themselves

or others, insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, or who conduct themselves in a manner which would subject the railroad to criticism.'

For your responsibility for violation of the above rule on December 18 and 19, 1978, you are dismissed from service of the Southern Pacific Transportation company...."

Claimant, pursuant to his discipline rule, requested a fair and impartial trial and hearing. Such hearing was held on January 4, 1979. As a result thereof, Claimant was advised by the Division Engineer, under date of January 12, 1979:

"...I have carefully reviewed transcript of testimony taken at the hearing on January 4, 1979, which clearly indicates that charges were sustained; and this is to advise that your dismissal from service of Southern Pacific Transportation Company is hereby reaffirmed."

The record reflects that Claimant was accorded the due process to which entitled under Article 14 - Discipline and Grievances.

There was sufficient evidence adduced to support the conclusions of Carrier as to Claimant's culpability. The record reflected that on December 18, 1978 Claimant did not and refused to have his truck ready to go to work. Claimant had it locked and despite being instructed to unlock same by his Foreman and the Road Master and take said the truck out to work Claimant refused. Thereafter, he assaulted his Foreman by attempting to force the Foreman to unlock the butane bottle on the gang's trailer.

The record further reflected that Claimant's conduct on the evening of December 19th created fear and apprehension in the minds of the two employees who shared the trailer with him. Said employees left the trailer early in the AM on Wednesday morning, because at that time Claimant was, among other things, singing, whistling, and beating on the floor. These employees chose to sleep in their car for the rest of the early morning hours. Claimant remembered very little of the incident. Examination of the trailer reflected that the wall had been dented, the door was kicked in at the back of the trailer. The door of the closet was pushed in. Claimant admitted to having a sore foot and that he had put his

hands on Foreman Foley. He likewise admitted that he had noticed some damage to the inside of the trailer.


The Board finds that Carrier had not acted arbitrarily when it dismissed Claimant. The discipline was appropriate to the circumstances of the situation for, as pointed out in Second Division Award 1659 (Carter):

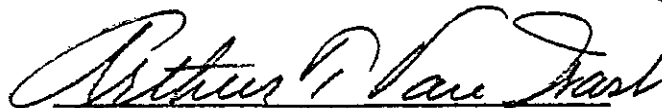
"Discipline is necessary to obtain efficient and orderly conduct of railroad operations. It is necessary also to protect fellow employees and supervising officers from physical violence by those who are disposed to settle their difficulties by such means. Every right under the agreement appears to have been accorded Claimant, including a fair hearing in which the facts were fully developed. We fail to find any reason for interfering with the action of Carrier in dismissing the Claimant from service."

Claimant had been previously suspended from service February 21, 1975 for a period of sixty days for violation of Rules 801 and 804 after an altercation with his Foreman. The Board finds no cause in this record to change the discipline imposed by Carrier and as in said Award 1659 we too shall deny the instant claim.

Award: Claim denied.


M. A. Christie, Employee Member


G. B. Goyne, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member