

PUBLIC LAW BOARD NO. 2444

Award No. 21

Case No. 30

Docket No. MW-79-50

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 George Cartwright was unjustly dismissed by letter dated December 28, 1978.

Claimant George Cartwright shall be reinstated to his former position with pay for all time lost, vacation, seniority 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 was advised, under date of December 28, 1978, by his Division Engineer:

"You were absent from your duty job assignment with out proper authority on December 22, and 26, 1978 which is in violation of Rule M810 of the General Rules and Regulations of the Southern Pacific Transportation Company, as posted by General Notice, effective April 1, 1978, which reads in part as follows:

Rule M810:

'Employees must report for duty at the prescribed time and place.... They must not absent themselves from their employment without proper authority....

Continued failure by employees to protect their employment shall be sufficient cause for dismissal....'

For your violation of Rule M810, you are dismissed from the service of the Southern Pacific Transportation Company..."

Claimant requested and was granted a fair and impartial hearing as provided by Article 14 - Investigation Discipline. As a result of the investigation, Claimant was advised that:

"Facts adduced at your hearing on January 30, 1979, show that you are guilty of being absent without authority on December 22 and 26, 1978 in violation of Rule M810 as charged: Therefore your dismissal will stand."

Rule M810 reads as follows:

"Employees must report for duty at the prescribed time and place, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority....

Continued failure by employees to protect their employment shall be sufficient cause for dismissal.

An employee subject to call for duty must not leave his usual calling place without notice to those required to call him...."

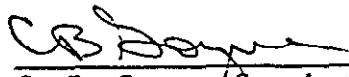
Claimant admitted to being absent on the two days in question. He likewise admitted that he had not obtained permission to be off on those two days. Such admissions are tantamount to a plea of guilty which leaves only the question of discipline.

The medical evidence introduced by the Employees concerning Claimant was neither timely relevant or probative. It reflected that Claimant was seen in a clinic of the University of Texas, Health Science Center, at Houston Medical, on December 29, 1978 and that he was taken into such Center on January 3 and 4, 1979 to be seen by another doctor on January 4, 1979. This date in the evidence is not supportive of the alleged illness that Claimant suffered. As to its materiality, it was not introduced at the investigation but was given to the Board.

In the circumstances, we find the discipline was reasonable. Claimant's record reflects that Claimant had been dismissed on July 14, 1975 for violation of Rule 810. He was later reinstated and he was again dismissed on November 22, 1977 for also violating Rule 810, Rule M and Rule 801. In the circumstances, 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

Issued at Falmouth, Massachusetts, August 15, 1980.