

PUBLIC LAW BOARD NO. 2444

Award No. 22

Case No. 31

Docket No. MW 79-66

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
Laborer Lester Byrd was unjustly dismissed on March 22, 1979.

2. Claimant Lester Byrd shall be reinstated to his former
position with pay for all time lost, seniority, vacation 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 by his Division Engineer, under date of March 22,
1979,:

"On March 14, 1979 at approximately 2:30 PM, Foreman
Vario found you loading a tool onto the truck; and
when he asked you what you were doing, you told
him you were loading up the tools. Mr. Vario told
you it was not time for you to load up the tools
and you should return to work. You told Mr. Vario
you were the boss and you could load the tools
when you wanted to. Mr. Vario told you that it
was not time to load the tools, that you had
thirty minues to work and that you should go back
to work. You returned to the job site but did not
go back to work or assist with the work after
2:30 p.m. This is in violation of Rule 801 of the
general rules and regulations of the Southern
Pacific Transportation Company.... which reads in
part as follows:

Rule 801

'Employees will not be retained in the service who
are...insubordinate....quarrelsome...

Any act of hostility, misconduct or willful disregard or negligence affecting the interests of the Company is sufficient cause for dismissal...'

For your violation of Rule 801, you are dismissed from the service of the Southern Pacific Transportation Company ..."

Claimant requested and was granted a hearing as was provided for by Article 14 of the governing agreement. Following the hearing, Claimant was advised by the Division Engineer:

"I reviewed the transcript of your hearing held on April 10, 1979 and found you were in violation of Rule 801 as charged, therefore, your dismissal will stand."

The Board concludes that Claimant was given a fair hearing.

There was sufficient evidence adduced to support the conclusions reached by Carrier as to Claimant's violation of Rule 801. Claimant was insubordinate. Despite any conflict in the testimony adduced there has been no showing that Carrier abused its rights to determine the credibility of the witnesses and the weight to be assigned to the testimony of each such witness.

It has been well established that dismissal is appropriate discipline in the cases of insubordination. See Third Division Award 19698, 19760, 19886, 20102, 20769, 20770, and 21059. The Board finds no cause in this record to modify the discipline assessed. Therefore, this claim will be denied.

Award: Claim denied.

M. A. Christie
M. A. Christie, Employee Member

C. B. Goyne
C. B. Goyne, Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member