

PUBLIC LAW BOARD NO. 2444

Award No. 3

Case No. 3

Docket No. MW-78-110

Case No. 4

Docket No. MW 78-111

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 Laborer A. W. Bushnell and Machinist Helper R. C. Bryant were dismissed on May 31, 1978 without just and sufficient cause.
2. Claimants A. W. Bushnell and R. C. Bryant shall be reinstated to their former positions with pay for all time lost and with all seniority, vacation and 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 Laborer Bushnell and Machinists Helper Bryant were involved in an altercation on May 30, 1978 and as a result received the following Notice dated May 31, 1978:

"For entering into an altercation...while on duty and on company property at Southern Pacific Transportation Company, Wood Preserving Works, at 4910 Liberty Road, Houston, Texas at approximately 9:00 PM on May 30, 1978, which is in violation of Rules 801 and 802 of General Rules and Regulations of Southern Pacific Transportation Company, you are dismissed from the service of the Company."

Both Claimants requested a hearing which was held on June 21, 1978. Thereafter both were notified, on June 23, 1978, that their dismissal was sustained.

The Rules cited read:

"Rule 801. Employees will not be retained in the service who are careless of the safety of themselves or other...quarrelsome or other wise vicious...any act of hostility, misconduct...or negligence affecting the interest of the company is sufficient cause for dismissal and must be reported."

"Rule 802. Indifference to duty, or to the performance of duty will not be condoned...employees must not enter into altercations, scuffle, while on duty."

The Board finds that Claimants were accorded the due process provided in their Discipline Rule. There was sufficient evidence adduced to support the conclusions reached by Carrier. Claimants were guilty of being involved in an altercation and as such both had violated Rules 801 and 802.

The Board finds that the discipline assessed was consistent with the offense. However, there were circumstances herein which served to mitigate the discipline imposed. Claimants will be reinstated to service with all rights unimpaired, but without any pay for the time out of service, subject, of course, to passing the necessary return to service examinations.

AWARD: Claim disposed of as per findings.

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

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