

PUBLIC LAW BOARD NO. 2444

Award No. 42

Case No. 55

Docket No. MW 80-147

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company
(Texas and Louisiana Lines)

Statement 1. Carrier violated the effective Agreement when Foreman
of L. S. Portillo was unjustly dismissed from service by letter
Claim dated April 8, 1980.

2. Claimant Portillo shall now be reinstated to his former position with pay for all time lost, vacation, seniority and all other rights unimpaired; and that his record be cleared of this charge.

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, a foreman of Extra Gang 334 had been employed by Carrier for almost eight years. He was advised under date of April 8, 1980 as follows:

"During the year 1978 you obtained cash money, and oil products and services for your personal use by use of Exxon and Texaco credit cards issued to Southern Pacific Transportation Company. Such action occurred between San Antonio and El Paso, Texas. Use of these credit cards for your personal gain was dishonest.

Your actions in connection with this activity are in violation of that portion of Rule 801 of the Rules and Regulations of the Maintenance of Way and Structures

reading as follows:

'801. Employees will not be retained in the service who are dishonest..

Any act of...misconduct...affecting the interest of the company is sufficient cause for dismissal..."

For the reasons stated above you are hereby dismissed from the service of the Southern Pacific Transportation Company.."

Despite the aggressive and innovative defense presented by the Employee Representative there was sufficient evidence adduced to support Carrier's conclusion as to Claimant Foreman's culpability.


The Board finds no ground for disturbing the discipline assessed. Claimant had a fair and impartial hearing, he was capably represented, he had an opportunity to produce any witnesses that he desired. The Special Agent's testimony withstood the test of cross-examination and Claimant exercised his right of appeal.

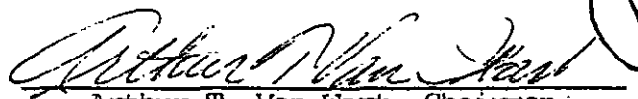
The Board does not substitute its judgment for that of the hearing officer as to the credibility of witnesses, the weight of evidence or conflict in such evidence. We do determine however that Carrier did not act so as to be considered arbitrary or capricious in its findings against Claimant. Nor can we find based on this record that Carrier acted unfairly or arbitrarily against the right of Claimant.

In the circumstances the discipline is found to be reasonable. 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