

PUBLIC LAW BOARD NO. 2444

Award No. 47

Case No. 60

Docket No. MW 81-18

Parties Brotherhood of Maintenance of Way Employes

to and

Dispute Southern Pacific Transportation Company  
(Texas and Louisiana Lines)

Statement Claim of BMW and Track Laborer T. W. Williams for reinstatement to his former position with pay for all time lost, all seniority, vacation rights and all other rights unimpaired, alleging unjustly dismissed 10-21-80, and further this charge be stricken from his record.

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 track laborer on Extra Gang 243, had been employed for some 18 months. He was advised under date of October 22, 1980, that he was dismissed from service as discipline for violating Rule M810 by being absent from his assignment without proper authority on October 21, 1980.

Claimant requested and was granted a hearing which was held on December 10th. As a result thereof he was advised that the dismissal would stand.

The Board finds that Claimant was accorded the due process to which entitled under his rule.

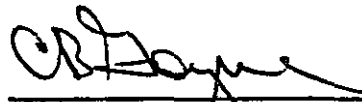
There was sufficient evidence to support the conclusion reached by Carrier as to Claimant's guilt. The Carrier as the trier of the facts determines the credibility of the witnesses. Here, Carrier chose to accept the testimony of its witness over that of Claimant. The witnesses who did testify against Claimant were not impeached nor their testimony substantially contradicted. Hence, absent a showing that Carrier's judgment had been arbitrary or capricious, the Board will not interfere with Carrier's conclusion.


The discipline assessed is found to be reasonable. Claimant had previously been disciplined and previously dismissed for violation of Rule 810 and had been reinstated on October 14, 1980 on a leniency basis.

In the circumstances this Claim will be denied.

AWARD: Claim denied.

  
M. A. Christie, Employee Member

  
c. B. Goyné, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Falmouth, Massachusetts, June 10, 1982.