

PUBLIC LAW BOARD NO. 2444

Award No. 50

Case No. 63

Docket No. MW 81-31
80-113

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Southern Pacific Transportation Company
(Texas and Louisiana Lines)

Statement of Claim Claim of BMWE and Track Laborer W. Spates for reinstatement to his former position with pay for all time lost, seniority, vacation, and all other rights unimpaired, alleging unjustly dismissed December 4, 1980.

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, was notified, under date of December 4, 1980 as follows:

"You are charged with the theft of Company property which is in violation of Rule 801 of the General Rules and Regulations of the Southern Pacific Transportation Company,...Rule 801 reads in part as follows:

RULE 801

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

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 which was held January 6, 1981. As a result thereof he was advised that the dismissal was upheld.

The transcript reflects that a Switchman, Southern Pacific Pilot, Harry Watson, reported that four truck jacks had disappeared or were missing from the gang truck, at Navasota, and that two jacks were reported missing or stolen from the Hemstead Gang Track on the weekend of July 12 and 13, 1980.

The Special Agents Office was notified on August 5th and an investigation ensued therefrom. As a result thereof, predicated on the evidence that the Agents Office adduced, such was sufficient in November 1980, to present and warrant the issuance of an arrest warrant as well as to make a presentment which, on November 20, 1980, caused Claimant Spates to be indicted by Grimes County Grand Jury. A true bill and indictment was issued and Claimant Spates bond was set at \$5,000.00. His trial is still pending.

The essence of the testimony adduced was that Claimant sold the six aluminum jacks to Mr. John Hayes, who among other things, moved houses. Both Mr. & Mrs. Hayes wrote letters implicating Claimant. Such information which had been presented to the Grand Jury was also presented at the Carrier's hearing. Carrier chose to believe it.

The Board concludes that the evidence, although circumstantial, was sufficiently strong enough to support the conclusion reached by Carrier as to Claimant's culpability.

In the circumstances the Board finds that the discipline assessed was not unreasonable. Claimant was accorded the due process to which entitled under his discipline rule. There was sufficient evidence adduced to support Carrier's conclusion and the discipline in the circumstances is found to be reasonable.

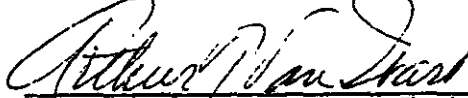
AWARD: Claim denied.



M.A. Christie, Employee Member



C. B. Coyne, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Falmouth, Massachusetts, June 10, 1982.