

PUBLIC LAW BOARD NO. 2444

Award No. 51

Case No. 65

Docket No. M-81-48  
302-79-A

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company  
(Texas and Louisiana Lines)

Statement Claim of BMWE and Track Laborer Joanes Smith for reinstatement  
of to his former position with all seniority, vacation rights and  
Claim all other rights unimpaired, in addition to all pay lost  
commencing December 16, 1980 to run concurrently until such  
time that Joanes Smith is restored to service.

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, had been employed almost eight years.  
He was assigned to extra gang 138. Claimant, on December 9, 1980, was  
relieving the labor/driver on said gang. He was advised under date of  
December 16, 1980 as follows:

"You are dismissed from the service of the Southern  
Pacific Transportation Company for your responsibility  
in having an accident in a company truck after assigned  
working hours without authority on Tuesday, December 9,  
1980 at approximately 11:45 PM, causing extensive damage  
to the company vehicle and to a 1971 Ford pick-up truck,  
which is in violation of that portion of Rule 801 and  
Rule M240 which read in part as follows:

'Rule 801. Employees will not be retained in the service

who are careless of the safety of themselves, dishonest,...

'Rule M240. Company vehicles are to be used expressly for and exclusively in Company business.."

The record reflects that sometime about 11:00 PM, or shortly thereafter, while off duty and in his assigned company trailer at the trailer park in Alexandria, Louisiana, some 12 miles from the work site; Claimant laborer remembered that he had taken his wedding ring off his finger while washing his hand and had forgotten and left the ring at said work site. There was no one at the trailer park that could provide either transportation or authority Claimant, not having any transportation and thinking of the thirteen years that he had worn the ring, used the company truck No. L-72 to go to the work site. He became involved in a vehicular accident on December 9th at about 11:30 PM.

The Board would not generally interfere with the discipline assessed. However, Claimant is a young man, with an excellent work record. He is considered by his supervisors as being one of the best laborers that they have had. We find that with such affirmative and credible recommendations that Claimant should be given another opportunity to continue working with the Carrier and at the same time provide Claimant with an opportunity to pay for the damage that he caused.


Consequently, subject to the following conditions, Claimant will be reinstated to service with all rights unimpaired but without pay for time out of service. The damage to Carrier's vehicle, L-72 is limited to \$3,000.00. Claimant will be required to repay that limited and stipulated amount at the rate of \$20.00 per pay period, by having same

deducted from his gross earnings until the Company has finally been recompensated up to the amount.

AWARD: Claim disposed of as per findings.

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

  
M. A. Christie, Employee Member

  
C. B. Goyne, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Wilmington, Delaware, May 29, 1982.