

PUBLIC LAW BOARD NO. 2444

Award No. 53

Case No. 67

Docket No. MW 81-58

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 Machine Operator L. J. Tolliver, Sr. was unjustly dismissed on January 5, 1981.

2. Claimant Tolliver shall now be reinstated to his former position with all seniority, vacation rights and any other things accruing to him unimpaired, in addition to all pay lost commencing January 5, 1981, and to run concurrently until such time that Mr. Tolliver is returned to service, 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 Machine Operator, on the Lafayette Division had been employed for some ten years. He was advised under date of January 5, 1981, as follows:

"You are dismissed from the service of the Southern Pacific Transportation Company for being insubordinate and hostile to District Manager R. A. Jackson on this date, which is in violation of Rule 801 of the General Rules and Regulations of the General Notice effective April 1, 1978, of Southern Pacific Transportation Company which reads in part as follows:

'Rule 801. Employees will not be retained in the service who are...insubordinate. Any act of hostility affecting the interest of the Company is sufficient cause for dismissal...'

Claimant requested and was granted a hearing which was held on January 20, 1981. As a result thereof he was advised that the discipline was upheld.

The Board finds that Claimant was accorded the due process to which entitled under Article 14 - Discipline and Grievances.

There was sufficient evidence adduced to support the conclusion reached by Carrier as to Claimant's guilt. Claimant was in the District Manager's office on January 5, 1981 to present his expense account which was approved. Shortly thereafter the District Manager was advised that Claimant was using his telephone contrary to the posted and articulated instructions that no one was to use the phone for personal business.

After Claimant was through talking thereon the District Manager spoke with him about this matter and Claimant started accusing the District Manager of being prejudiced and picking on him. Thereafter, the District Manager told Claimant to leave the office and go back to his machine. Claimant kept repeating his accusations. He was told four times to leave the office to go back to work. Claimant refused and said he wasn't going anywhere whereupon the District Manager advised that if Claimant wasn't going back to work that he was going to remove him from service. Claimant still maintained he wasn't going anywhere so the District Manager advised Claimant he was out of service. Claimant still refused to leave. However, when the District Manager told his clerk to call the police to have Claimant escorted out of the office Claimant became excited and hostile and, among other things, said that he quit.

Claimant had previously been told by another machine operator that he could not use the phone but he stated that he was going in to use it anyway. While Claimant's version of the incident differed somewhat from that of the District Manager, Carrier chose to believe the testimony of its witnesses. Absent a showing of abuse of its discretionary right or being arbitrary or capricious the Board finds that Carrier acted reasonable.

In light of the seriousness of the offense Claimant should have obeyed the instructions of his superior and grieved if he believed that he had a grievance. For that, could have been handled through the grievance machinery. It was noted by Second Division Award 4782 (Whiting)

"The proffered testimony might be relevant to a question as to whether the directions given were proper or reasonable, but such a question does not excuse or justify disobedience to the directions. To hold otherwise would make each employee his own judge of what is reasonable and what work he will perform. No business could be conducted on the basis of such anarchy. The only way to raise an issue as to the reasonableness of a supervisor's directions is to obey and file a grievance. This is the procedure provided by the contract and must be followed. Disobedience consists of taking the law into ones own hands and is insubordination, which is a proper basis for discipline."

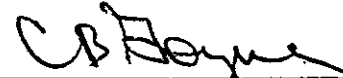
The Board on this record and Claimant's personal record which reflected that he had been dismissed for violation of Rule 810 in 1975 for being absent without permission, that Claimant had been reprimanded previously thereto, that he was assessed forty-five demerits on September 19, 1975, that he was dismissed in September 1976 for being dishonest, that Claimant was dismissed in 1979 for insubordination and that he was dismissed again in 1980 for violation of Rule M, causes the


Board to conclude that the discipline assessed in this case is most reasonable. Four previous dismissals is enough.

In the circumstances this Claim will be denied.

AWARD: Claim denied.


M. A. Christie, Employee Member


C. B. Goynes, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Falmouth, Massachusetts, June 10, 1982.