

PUBLIC LAW BOARD NO. 2444

Award No. 59

Case No. 73

Docket No. MW-81-101

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 Bridge Tender Nolan Hester, Jr.
for reinstatement to his former position with pay for
all time lost, all seniority, vacation rights and any
other rights accruing to him unimpaired, alleging
unjustly dismissed.

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, prior to his dismissal, had been working as a Bridge Tender on the Shriever, Louisiana District. He had been employed as such for more than 3 years.

Claimant was dismissed from service March 13, 1981 and April 16, 1981 for violation of Rule G and Rule M810 of the General Rules and Regulations of the General Notice effective April 1, 1978. Claimant was observed by both the Regional Maintenance of Way Manager and the District Manager sitting in his automobile, away from his assigned place of duty without proper authority, drinking a beer while on duty. Following a formal investigation held therewith the discipline of dismissal was upheld.

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

There was sufficient evidence, including the admissions of Claimant, that he had been drinking beer, adduced to support the conclusions reached by Carrier as to Claimant's guilt. There was no log maintained on the south side. There were no boats logged between the hours of 8:00 AM to 9:30 AM. It was shown that two boats went by at 9:15 AM and 9:45 AM.

In view of the nature of Claimant's job and the character of the defense offered we cannot find that the discipline imposed was arbitrary or capricious. In the circumstances, 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

Issued May 11, 1983.