

PUBLIC LAW BOARD NO. 2444

Award No. 69

Case No. 83

Docket No. MW-81-148

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 Apprentice Track Foreman Joseph D. Morris for reinstatement to his former position with all seniority, vacation rights and any other rights accruing to him unimpaired in addition to all compensation lost commencing June 20, 1981 and to run concurrent until Mr. Morris is restored to service, 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 was advised under date of June 23, 1981 by the Regional Maintenance of Way Manager in part as follows:

"On June 19, 1981 at approximately 11:00 p.m., while on duty you were arguing with Laborer M. Comeaux and physically shoved him to the ground. This is in violation of Rule 802 of the General Rules and Regulations of the General Notice of April 1, 1981 of the Southern Pacific Transportation Company which reads in part as follows:


'Rule 802. Indifference to duty, or to the performance of duty, will not be condoned. Courteous deportment is required of all employees in their daily work...each other... Employees must not enter into altercation, scuffle, engage in horse play or wrestle while on duty...'

For your violation of Rule 802, you are dismissed from service of the Southern Pacific Transportation Company..."

Claimant requested and was granted a hearing which was held on July 15, 1981. As a result thereof, Carrier concluded Claimant to be culpable as charged and the discipline of dismissal was upheld.

Claimant was the other participant involved in the altercation reflected in Case No. 87 which resulted in our Award No. 73, the findings of which, by reference are incorporated herein and made part hereof. There the other participant in said altercation was dismissed. We find nothing in the record to conclude otherwise here. Claimant slapped Laborer Comeaux first and precipitated the altercation. In the circumstances, this claim will also 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.