

PUBLIC LAW BOARD NO. 2444

Award No. 7

Case No. 11

Docket No. MW-78-130

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 Lafayette Division Machine Operator J. L. Bush was unjustly dismissed August 10, 1978.  
2. Claimant J. L. Bush shall be reinstated to his former position with pay for all time lost and with all vacation, seniority and all other rights unimpaired due to his being unjustly dismissed by letter dated August 10, 1978.

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.

Findings: Claimant Machine Operator received the following Notice, dated August 10, 1978, from his Division Engineer:

"You are hereby dismissed from the service of the Southern Pacific Transportation Company for absenting yourself from your employment without proper authority on August 8, 1978, which is in violation of Rule 810 of the General Notice, General Rules and Regulations of Southern Pacific Transportation Company which reads in part as follows: 'Rule 810. Employees must report for duty at the prescribed time and place....They must not absent themselves from their employment without proper authority....'"

Claimant requested and was granted a hearing August 23, 1978 as a result thereof he was advised under date of August 28, 1978:

"I have reviewed the transcript of the hearing and this is to advise you that the position as stated in my letter of August 10, 1978 is sustained."



The Board finds that Claimant was accorded all the rights to which entitled under his Discipline Rule. That there was sufficient evidence to support the conclusions reached by Carrier as to Claimant's culpability.


The Board would not ordinarily interfere with the discipline in this case, which in the circumstances, it would have found to be reasonable. However, it believes that this Claimant on the basis of mitigating circumstances, is entitled to a last chance. On that basis, Claimant will be returned to service with all rights unimpaired, but without pay for time out of service, subject to passing the usual return to service physical examination. Subject also to participating in a meeting with his Local Union Representative and Carrier's Local Representative for the purpose of review of his record and Operating Rule 810 to be sure that Claimant properly understands the application of the Rule and his obligation thereunder and the need to protect the requirements of his assignment. Claimant will be on probation for six (6) months insofar as Rule 810 is concerned.

AWARD: Claim disposed of as per findings.

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 Salem, New Jersey February 7, 1980.