

PUBLIC LAW BOARD NO. 2444

Award No. 73

Case No. 87

Docket No. MW-81-144

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 Track Laborer Michael Comeaux of Extra Gang #141 at Dayton, Texas 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 concurrently until such time he 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.

As a result of an altercation, Claimant was advised, under date of June 19, 1981, by the Regional Maintenance of Way Manager as follows:

"On June 19, 1981 at approximately 3 a.m. you struck Mr. J. D. Morris in the head with a pick handle while on duty. This is in violation of Rule 801 of the General Rules and Regulations of the General Notice, effective April 1, 1978 of the Southern Pacific Transportation Company.


For your violation of Rule 801, you are dismissed from the service..."

Following a hearing held at Claimant's request he was advised under date of July 21, 1981 that the decision stated in the letter of June 23, 1981 was sustained.

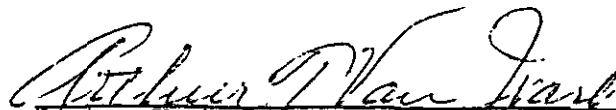
The Board finds that Claimant was accorded the due process to which entitled under his discipline rule. Claimant was involved in a very serious incident and he inflicted injury on a fellow employee. No provocation could be so great as to cause such a deed. This record reflects no justification of any nature whatsoever. Carrier need not, cannot and should not tolerate the conduct involved herein. Claimant's admission that he struck Morris is a plea of guilt, leaving only the question of the discipline to be assessed.

Dismissal has long been considered an appropriate remedy in occasions of employees fighting on duty. See among others, Third Division Award No. 19538 (Wenke), Award No. 17269 (McCandless) and No. 20314 (Lieberman). 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 March 14, 1983.