

PUBLIC LAW BOARD NO. 2444

Award No. 91

Case No. 105

Docket No. MW-82-56

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 W. C. King, Jr. for reinstatement to his former position with the SP, Eastern Lines, with pay for all time lost, seniority, vacation and other rights unimpaired, alleging unjustly dismissed and not allowed a fair and impartial hearing:

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 Track Laborer on Extra Gang 245, was advised under date of December 7, 1981 by the Regional Maintenance of Way Manager, in part, as follows:

"At 7 a.m., December 4, 1981 you told District Manager B. L. Reinhardt you were not going to work. Mr. Reinhardt told you that you have to perform the work required of you as Laborer on Extra Gang 245. You again said you were not going to work. This is in violation of Rules 801 and 802 of the General Rules and Regulations of the Southern Pacific Transportation Company... Rules 801 and 802 read in part as follows:

Rule 801:

'Employees will not be retained in the service who are...insubordinate...

Any act of...willful disregard...effecting the interest of the company is sufficient cause for dismissal.'

Rule 802:

'Indifference to duty, or to performance of duty, will not be condoned...'

For your violation of Rules 801 and 802, you are dismissed from service of the Southern Pacific Transportation Company..."


Claimant requested and was granted a hearing ultimately held January 28, 1982. As a result thereof, he was advised that the discipline assessed would stand.

The Board finds that Claimant was accorded the due process to which entitled. Claimant's request for a hearing was not received until January 15, 1982 and the hearing was held on January 28, 1982.

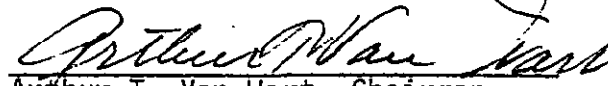
There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's guilt.

Claimant's record indicates that he had been previously dismissed for being insubordinate on February 10, 1981 and he was reinstated on a leniency basis. Claimant was again dismissed on July 16, 1981 for the same violation for being insubordinate and for using vulgar and profane language. He was again reinstated on a leniency basis. In the instant case he was again dismissed for violation of Rules 801 and 802. Consequently, as the holder of such a poor service record there is no basis in this record for change in the discipline assessed by Carrier. 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