

PUBLIC LAW BOARD NO. 2444

Award No. 95

Case No. 108

Docket No. MW-82-184

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 Foreman R. C. Macias for reinstatement to his former position with all seniority, vacation rights and any rights accruing to him unimpaired, in addition to all compensation lost commencing August 3, 1982, and to run concurrently until reinstated, 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 by Carrier's Assistant Regional Engineer under date of August 3, 1982 as follows:

"You are dismissed from the service of Southern Pacific Transportation Company effective August 3, 1982 for your being absent from your employment as Track Foreman without proper authority from July 19, 1982 through and including August 2, 1982. This is in violation of Rule M810 of the General Notice of the General Rules and Regulations of Southern Pacific Transportation Company effective April 1, 1978 which reads in part as follows:

'Rule M810. Employees must report for duty at the prescribed time and place...they must not absent themselves from their employment

without proper authority...continued failure
by employees to protect employment shall be
sufficient cause for dismissal..."

Request for a formal hearing was made, granted, and after a postponement the hearing was held on September 1, 1982. Thereafter, Claimant was advised that he was guilty as charged.

Claimant was accorded the due process to which entitled under his discipline rule.

There was sufficient evidence adduced to support Carrier's conclusions.

Without burdening the record, the Board concludes that there are circumstances which serve to mitigate the discipline assessed. Claimant will be conditionally reinstated to service without pay subject to a joint review of his record with a designated representative of both Carrier and the Organization. Claimant is to understand therefrom that he is on notice and aware of his obligations under Rule M810. Thereafter, subject to satisfactorily passing the necessary return to service examinations Claimant shall be returned to service with all his rights unimpaired and placed in a probationary status for 18 months. Claimant should understand and be aware that if he violates his probation during such period that, if proven, such violation standing alone will be sufficient cause for his dismissal.

Award: Claim disposed of as per finding.

Order: 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