

PUBLIC LAW BOARD NO. 2444

Award No. 97

Case No. 110

Docket No. MW-82-154

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company  
(Texas and Louisiana Lines)

Statement

of Claim: Claim of BMW and Machine Operator G. L. Burks  
for removal of 45 demerits from personal record  
and work record cleared of the alleged charge of  
violating Rule M801, alleging unjustly issue  
demerits:

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 April 20, 1982 by Carrier's Assistant Regional Engineer in part as follows:

"Your personal record is being assessed 45 demerits for your being absent from your employment without proper authority on April 7 and 8, 1982. This is in violation of Rule M810 of the General Notice of the General Rules and Regulations effective April 1, 1978 of Southern Pacific Transportation Company which reads in part as follows:

'Rule M 810. 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 their employment shall be sufficient cause for their dismissal.'"

Claimant requested and was granted a formal hearing. It was postponed and held on June 17, 1982. Claimant failed to appear thereat notwithstanding that he had acknowledged receipt of the certified notification as to said hearing.

The Board finds that Claimant was accorded the due process to which entitled under his agreement. His failure to attend placed him in the position of having acted at his own peril thereby permitting Carrier to proceed and establish a record by which Claimant is then bound.

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


There were circumstances in the record which served to mitigate the discipline assessed. Consequently, the discipline is reduced to 10 demerits.

Award: Claim disposed of as per findings.

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

Issued October 21, 1983.