

PUBLIC LAW BOARD NO. 3558

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TO)
DISPUTE) SOUTHERN PACIFIC TRANSPORTATION CO. (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim in behalf of Bridge Tender Brian P. Andras for 184 hours pay at bridge tender's respective pro rata rate, because of Mr. Andras' unjust suspension from service commencing June 21, 1984 through and including July 13, 1984." (MW-84-91)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

On June 16, 1984, at about 11:15 A.M., a drilling rig that was being towed by one tug boat and pushed by another, struck the Carrier's rail bridge at Bayou Boeuf, Louisiana. At the time, Claimant was working as a Bridge Tender and the force of the impact knocked the bridge house into the water, reportedly causing Claimant to sustain personal injury.

Insofar as the above incident and the instant dispute are concerned, it relates to a question as to whether Carrier had sufficient reason to discipline Claimant by imposition of a suspension of 23 calendar days (June 21, 1984 through July 13, 1984) on the basis of its findings in connection with the following charge as set forth in a Carrier letter dated June 21, 1984:

"It is alleged that on or about 11:00 AM, on June 18, 1984 in the Carrier's Office at Schriever, Louisiana you refused to provide B&B Supervisor T. A. Patin and Claim Agent R. Vancor information and complete necessary forms regarding the accident occurring at Bridge No. 73.3 at Bayou Boeuf, Louisiana, on June 16 at approximately 11:15 AM, while you were on duty as a bridge tender.

This action on your part may be in violation of Rule 801 of the General Notice of the General Rules and Regulations of Southern Pacific Transportation Company, effective April 1, 1978.

You are hereby suspended pending an investigation of these charges which will be held at 210 Johnston St., Lafayette, Louisiana, room #140."

That portion of Rule 801 which the Carrier held Claimant to have been in violation of, reads:

"Rule 801. Employees will not be retained in the service who are...insubordinate..."

Since the Petitioner raises the threshold argument that Article 14(a), "Discipline and Investigations," of the current Rules Agreement was violated by Carrier in removing Claimant from service for what it maintains was an alleged offense of less than a serious matter, the Board will first address this issue.

Article 14(a), as is here pertinent, reads:

"An employee who has been in the service for 60 days or more, shall not be dismissed or disciplined, except as provided in this agreement, without a fair and impartial investigation. They may, however, in serious cases, be held from service, pending such investigation."

Although it may be that the Carrier had reason to believe certain of Claimant's actions as reported by its agents constituted insubordination, the Board would question the degree of seriousness which Carrier attached to such a determination. We say this in the light of Carrier having waited three days beyond the date of the alleged incident giving rise to the charge of insubordination (June 18, 1984 to June 21, 1984) before suspending Claimant from all service, albeit he was reportedly off duty at the time account personal injury.

This Board will not hold that discipline be set aside on the basis of what might well be held to have been a belated action by the Carrier. However, we do believe that by Carrier not having taken more timely action, such delay casts serious doubt upon the credibleness of any argument that Claimant's alleged refusal to provide certain information constituted gross insubordination.

As to the merits of the dispute, this Board is not persuaded that Carrier has met the burden of proof necessary to substantiate its holding that Claimant had in fact been guilty of insubordination. We think the record clearly supports a finding that Claimant had followed recognized procedures for reporting the incident and the

filing of reports. He had reported the accident to the dispatcher and had thereafter further discussed the matter the evening of June 16, 1984 with the B&B Supervisor. He also submitted, as requested at a meeting with the B&B Supervisor and a Claim Agent on June 18, 1984, a personal injury report (Form 2611); and a bridge tender accident report on Form CS-2957-A "General Information Covering Accidents, Injuries and Occupational Illnesses." On this latter form, Claimant described how the accident happened, stating: "Rig passed on wrong side of span and passed to (sic) close and knocked bridge house and all belongings went with it."

There is nothing of substance in the record to establish that information furnished by the Claimant on either of the two above mentioned forms had been incorrectly reported or in need of specific clarification with respect that information which had been available to Claimant at the time in question. The record also fails to establish Claimant had in fact been asked to complete any other unspecified but described as "necessary forms" in the Carrier's statement of charge.

The record does show, however, Carrier's [Personal Injury] Claim Agent was seeking to tape record additional information with respect to the full nature of Claimant's on duty injury, albeit the Claim Agent had openly requested permission to tape Claimant's statements, and that the Claimant was taking exception to certain of the additional information being requested of him.

The Board does not dispute the use of tape recorders, provided, as here, use of such device is made known to the employee being questioned and, further provided, that the employee accedes to use of the recorder in connection with the giving of a statement related to a personal injury and is thereafter promptly provided copy of any recorded statement.

The Board can also appreciate the Carrier need to be furnished information related to an accident or injury in a prompt manner so that it may determine any third party liability or take action to correct an unforeseen situation. However, when there is reason to suspect, as here, that the information being sought is more in the nature of establishment of a defense against an FELA claim rather than for the purpose of clarifying a previously submitted report, we think the Carrier has a particular high degree of burden of proof to show in a disciplinary proceeding that additional information being sought from an employee was in fact related to the cause of the accident and not for the purpose of unduly enhancing a defense in a personal injury action.

In the circumstances of record, the Board fails to find that Claimant had refused to comply with routine or regular directives connected with the reporting of an accident to the best of his knowledge. We will, therefore, hold that the claim be sustained and that Claimant be compensated for any time lost from service as result of the disciplinary suspension.

AWARD:

Claim sustained.



Robert E. Peterson, Chairman
and Neutral Member



C. E. Goyne
Carrier Member



M. A. Christie
Organization Member

Houston, TX
February 4, 1986