

PUBLIC LAW BOARD NO. 3558

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SOUTHERN PACIFIC TRANSPORTATION COMPANY (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of System Track Laborer A. M. Morin for 32 hours at his straight time rate of pay and the charge of violation of Company Rule 810 removed from his personal record, alleging unjustly suspended."
(MW-83-62/381-86-A)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee respectively 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.

The issue here in dispute is found to concern a question as to whether following the exercise of displacement rights to a regular position when his gang was cut off, Claimant had been granted permission to have a March 22, 1983 displacement be effective March 28, 1983, and thereby not guilty of being absent without proper authority on March 23 and 24, 1983.

Unfortunately, the transcript of hearing in this dispute is found wanting as concerns development of a number of facts which we find necessary to a complete determination of the question at issue. For example, the Claimant stated at the company hearing he had called on March 21 concerning the displacement that was to take effect on March 22. The record is devoid, however, of testimony as to why Claimant had not reported on March 22, or why he was not charged with being absent on the first day of such displacement, as opposed to being charged with absenteeism on March 23 and 24. The Claimant also maintains that he had called the Secretary to the Carrier's Project Engineer on March 23 account his having car trouble and not being able to get to his assignment and that she had told him it would be all right for him to instead report on March 28 as he requested. However, it was the Secretary's testimony, "When he called to lay off, I did not discuss his laying off, I discussed his displacement rights with him -- on March 22nd. Wait a minute. He didn't call me on the 22nd, he called on March 23rd to lay off. On March 23rd, when he called me to lay off, we did not discuss the laying off, we discussed his displacement rights." Further diverse testimony is left unclarified as concerns the Project Engineer's recollection of the sequence of events. He stated he had not received any notification relative to Claimant not being at work on March 23, asserting his Secretary "had called Englewood March 24th and I got the message March 25th to call her [and] I talked to her March 24th (sic) and she said Mr. Morin had notified her at 12:00 March 24th to excuse himself from work."

The foregoing conflicts of testimony notwithstanding, we find there is reason to believe that although Claimant was aware the Secretary was not the person he

was obliged to call to seek permission to be off from work when he allegedly experienced automobile problems, the Secretary nevertheless has handled displacements and by her actions in handling Claimant's request for a postponement of his displacement gave him reason to believe it was being approved for March 28 as opposed to March 22.

Under the circumstances of record, it will be this Board's holding that Claimant be compensated for time lost account being suspended from service March 28 through March 30, 1983, but that his disciplinary record include a formal reprimand account his failure to follow recognized procedures for seeking permission to be absent from work.

AWARD:

Claim sustained to the extent set forth in the above Findings.

ORDER:

The Carrier is directed to make this Award effective within 30 calendar days of the date set forth below.



Robert E. Peterson, Chairman
and Neutral Member



C. B. Goyne, Carrier Member



M. A. Christie, Employee Member

San Antonio, TX
June 30, 1984