

PUBLIC LAW BOARD NO. 3558

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

STATEMENT OF CLAIM:

"Claim on behalf of Dallas Division Machine Operator L. R. Muzny for reinstatement to his former position with pay for all time lost, with vacation rights and all other rights unimpaired commencing Sept. 19, 1983, and to run concurrently until he is restored to service."
(MW-83-118/403-10-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.

This case involves the dismissal of Claimant, an employee of Carrier for 13 years, account his involvement in a verbal altercation with a fellow employee on September 12, 1983.

There is no doubt from a reading of the transcript of hearing that Claimant had used vulgar, profane and derogatory language in expressing his annoyance toward a fellow employee for not following the accepted or recognized practice of operating his tamper a short, but safe distance from the track liner which Claimant was operating so as to permit both operators to rerail any buggies that go off the track. It is also unquestioned that at the time, even though the other employee had responded with certain vulgarities, that this employee felt threatened by Claimant's remarks and gestures, although admittedly Claimant did not touch or make contact with the other employee in any way. It is also apparent from testimony of witnesses that it is apparently not unusual for Claimant to be using a number of profane words in general conversation.

While the Carrier urges that on the basis of Claimant's proven guilt in this case and his past disciplinary record that the penalty of discharge is not harsh or unreasonable, we believe it is excessive. Accordingly, we will hold that Claimant be reinstated to service with seniority and other benefits unimpaired, but without compensation for time lost. We do not infer by such action that we treat lightly the conduct of Claimant, for there is no doubt that relations would disintegrate into a chaotic condition if employees were permitted to resort to unrestrained abusive attacks on one another. However, we feel that the time Claimant will have been out of service to the date of this Award will represent sufficient admonishment that control of his volatile disposition is necessary to any continuing future employment relationship.

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. Goynes, Carrier Member



M. A. Christie, Employee Member

San Antonio, TX
June 30, 1984