

PUBLIC LAW BOARD No. 3626

AWARD No. 3

Docket No. 3

Case MW-84-23

PARTIES TO DISPUTE:

Southern Pacific Transportation Company  
(Eastern Lines)

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

1. Carrier violated the effective Agreement when Machine Operator Jimmy Johnson was unjustly dismissed by letter dated December 6, 1983.
2. Claimant Johnson shall be reinstated to his former position with pay for all time lost, with seniority, vacation and all other rights restored intact.

OPINION OF THE BOARD

The Carrier accused the Employee of deliberately refusing to carry out a direct order of his Foreman and he was dismissed from service.

The Claimant requested a hearing and, subsequent to the hearing, the Carrier affirmed the penalty of discharge.

According to the testimony adduced at the hearing, the Claimant was instructed (on three occasions) to assist a group of employees working with ties, however he refused to assist in the installation. The Employee's stated reason to the Foreman was not satisfactory to the Carrier.

The Claimant denies that he was being insubordinate and asserts that he was merely attempting to clarify the directions to him.

The Board has reviewed the entire record before it and, as noted in prior awards of this Board, we have no basis for substituting our judgment for that of the carrier concerning the credibility resolutions which resulted in a finding of guilt to the offense charged.

Concerning the quantum of discipline imposed, we have noted that the Employee had not been employed by the Carrier for a significantly long period of time and he has been assessed certain discipline in the past. Nonetheless, from our review of the record, the Board is of the view that the assessment of a permanent dismissal was arbitrary in this particular case and we will restore the Claimant to service in accordance with the Chairman's letter of August 13, 1984, authorizing restoration of the Claimant to service. However, we do not feel that it is appropriate to award any back pay during the period of suspension.

#### FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

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.

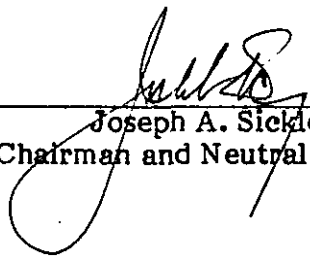
The parties to said dispute were given due and proper notice of hearing thereon.

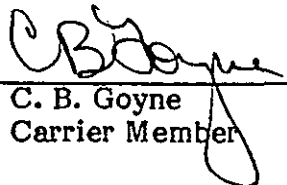
#### AWARD

1. The termination set aside.

2. Carrier shall restore the Claimant to service in accordance with the Neutral Referee's letter of August 13, 1984. There shall be no loss of seniority or other benefits, however, the Claimant shall not be reimbursed for any compensation lost during the period of the suspension.

3. Carrier shall comply with this award within thirty (30) days of the effective date hereof.

  
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Joseph A. Sickles  
Chairman and Neutral Member

  
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C. B. Goyne  
Carrier Member

  
\_\_\_\_\_  
M. A. Christie  
Employee Member

10-19-84  
Date