

PUBLIC LAW BOARD No. 3626

AWARD No. 4

Docket No. 4

Case 84-15

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 Wood Preserving Works Laborer R.L. McGuire was unjustly dismissed by letter dated November 3, 1983.

2. Claimant McGuire shall be reinstated to his former position with pay for all time lost, with vacation, seniority, and all other rights restored and his personal record cleared of all charges.

OPINION OF THE BOARD

The Claimant was dismissed from service for allegedly leaving his assigned place of work without proper authority and exhibiting indifference toward his assigned task. The Employee requested a hearing and subsequent to the hearing the termination from employment was affirmed.

The Yard Foreman testified at the hearing that he had instructed the Claimant to perform specific duties on the day in question. According to the Foreman, the Employee did not perform the duties as assigned and, in fact, at one point, he started "playing" in water with a stick which he had picked up.

The Claimant denies that he was away from his assigned post for any significant period of time, and that time was utilized in attempting to obtain tools to facilitate the clean-up work assigned to him. That pursuit took approximately 10 minutes and was not more than 75 yards from the job assignment. He denies "playing" in the water with a stick.

Certain procedural questions have been raised concerning timeliness, however, the Organization has not presented sufficient evidence to us to require that we consider the case on that procedural ground. Concerning the merits, once again, as in prior cases descided by this Board, we are faced with a credibility conflict in the testimony. As has been stated before by this, and many other Board, we are not constituted to substitute our judgment for that of the Carrier concerning credibility determinations as long as there is evidence of record which would support the version accepted by the Hearing Officer. Clearly, there is such evidence of record in this case and, thus, we are powerless to dismiss the credibility determinations made prior to the submission of the case to this Board.

While, at first view, the punishment of dismissal may appear harsh for the offense in question, our attention has been invited to the rather unenviable discipline record. We find that since 1975 he has had a number of disciplinary actions taken against him including two dismissals and restorations to service on a leniency basis. Based upon that consideration, we do not find that it was arbitrary or capricious for the Carrier to impose a disciplinary action of termination and, accordingly, we will deny the claim.

FINDINGS

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

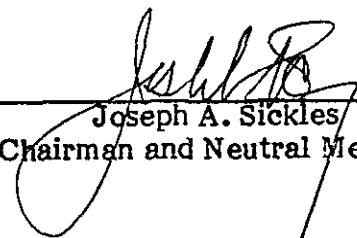
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

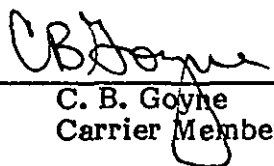
The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

1. Claim denied.



Joseph A. Sickles
Chairman and Neutral Member



C. B. Goyne
Carrier Member



M. A. Christie
Employee Member

10-19-84

Date