

PUBLIC LAW BOARD NO. 3836

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

-and-

SOUTHERN PACIFIC TRANSPORTATION
COMPANY (WESTERN LINE)

CASE NO. 6: Appeal of F.J. Briones, SSA #573-84-4107 from discipline by assessment of sixty (60) demerits for violation of Rule M532 - "Foreman must keep the records and make the prescribed reports of the time of their men."

BACKGROUND:

On September 20, 1985 District Manager Jerry H. Smith observed two laborers assigned to Extra Gang 66 leaving SOPTC's property at 2:30 P.M., one (1) hour prior to the scheduled quitting time of this Gang.

Upon making inquiry to the Appellant (then the Foreman of this Gang), Smith was informed that these employees had been granted permission to quit early for personal reasons.

Smith noted the early departures and; when checking the Appellant's time record for the payroll period involved, discovered that the Appellant had entered eight (8) hours for each of these employees on September 20, 1985, the date of their early quit.

The Appellant, F.J. Briones, was subsequently charged with "alleged improper reportings of time worked on Form CS 201-E wherein you indicated that employees J.M. Lee III and D.R. O'Neil worked eight straight time hours Friday, September 20, 1985 when in actual-

ity they had only worked seven hours."

A "Hearing" was conducted by D.P. Capovilla, Manager, MW Training, on November 6, 1985.

DISCUSSION:

Briones testified on his own behalf. He did not deny that he had not received Smith's authority to pay employees for time not worked, specifically he was not authorized to do so on Friday, September 20, 1985. Nevertheless, he considered it equitable to do so, because these employees had, on various occasions, worked through their assigned lunch periods in order to maintain production.

He related that "Jim Lee asked if he could be off a little early because he had to go see his parole officer or doctor." Briones told him, "we are not running the tamper, it broke down, were done with the job, there is no reason I can't let you go early because of the lunches that you guys worked through to get production."

Briones acknowledged that he did not inform Smith that his Gang had on occasions worked through their lunch periods, "No, I didn't let him know because half the time I can't get ahold of him, many times. I talked to him in the morning, half the time he don't give me the chance to explain."

District Manager Smith and his Clerk, M. Harden, appeared for SOPTC. In summary they testified that; Briones had never sought or was granted permission to allow employees time not worked with pay (early quits), as a form of compensation for having worked through

their lunch periods.

Harden testified (TR 12) that; there had been previous problems with Briones properly performing his ministerial responsibilities, i.e. "problems with his 203's and 488's, some problems with his time rolls." "As far as actually showing the time, I am not aware of any problems..., but information about the men and different things like that, Social Security Numbers, employee account numbers, yes, we had problems." Harden questioned Briones' ability to do his "so-called paper work." "I felt he had a definite lack of understanding where Labor Reports 203, 488 were concerned. I felt that he didn't know exactly how to make his reportings and didn't understand the proper GMO's, etc., how to show time."

OPINION AND FINDING:

Clearly Briones was wrong in assuming he had authority to breach a provision of the parties' collectively bargained agreement, specifically Rule 21 (pg. 18), "If employees are required to work during the designated meal period, said meal period shall be paid for at the applicable rate of pay and 20 minutes in which to eat shall be afforded at the first opportunity."

On the other hand, SOPTC has not shown that Briones had any intention to manipulate the payroll or to defraud SOPTC by being a party to any scheme involving the theft of "time."

Further, Smith, when asked whether, after finding the discrepancy in Briones' Time Report, he confronted Briones concerning his possible error, he replied "I did not." Neither did Smith remit a corrected 201-E correcting Briones' report, which he knew to be in-

correct.

Finally Smith was asked: "After you found the discrepancy on the time roll for September 20th, and there was no corrected time roll submitted, were the people in question compensated for the time as shown on the time roll?" Smith's reply: "Yes, they were, to the best of my knowledge." (TR 9) (Arbitrator's underlining).

Clearly, Smith had the opportunity (the obligation) to rectify this situation as soon as he became aware of it and, not permit the incorrect reporting of time to result in an improper payment to the employees involved.

Perhaps Briones is not supervisory material; if not there are methods available to handle that situation.

However, Briones does not have a poor record as an employee. He has broken service commencing in 1974, he has been continuously in service since 1976, without any formal disciplinary action having been taken against him.

Based on the record the requirements of Rule 45 were met by SOPTC, Capovilla did accord Briones a "Fair and Impartial Hearing."


Finally, based upon Briones admitted violation of the applicable Rules and Regulations there was a basis for the imposition of some discipline. However, the assessment of sixty (60) demerits, based upon this record, two-thirds of the number of demerits that would place Briones in jeopardy of dismissal, is "Excessive" within the meaning and intent of the parties' collectively bargained agreement.

AWARD:

The sixty (60) demerits assessed against the Disciplinary Record of the Appellant, F.J. Briones, SSA #573-84-4107, shall be expunged therefrom.

Briones' Disciplinary Record shall be corrected, in the manner and to the extent necessary, to show that Briones has been reprimanded for improper reporting on Form CS 201-E, September 20, 1985.

It is so ordered:


John J. Gaherin
Chairman & Neutral Member

4/30/86