

PUBLIC LAW BOARD NO. 4373

PARTIES	SOUTHERN PACIFIC TRANSPORTATION COMPANY )	
	(EASTERN LINES) )	
TO	AND )	AWARD NO. 11
	BROTHERHOOD OF MAINTENANCE OF WAY )	CASE NO. 17
DISPUTE	EMPLOYEES )	

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement when San Antonio Division Track Laborer J. J. Thomas, Jr. was unjustly dismissed from service.
2. Claimant Thomas shall now be reinstated to his former position with all seniority, vacation rights and any other rights accruing to him unimpaired in addition to all pay lost commencing September 15, 1987, and to run concurrently until Mr. Thomas is rightfully restored to service.

HISTORY OF DISPUTE:

On August 17, 1987 Claimant failed to report for his assignment on Extra Gang 311 headquartered at San Antonio, Texas. One of Claimant's supervisors received a call from a woman saying that Claimant was having problems and would not be at work that day. Several days later Claimant stated to a Carrier official that he had experienced car trouble on August 17.

The Carrier notified Claimant to appear for formal investigation on the charge that he had violated Rule 604 requiring employees to report for duty at the designated time and place and prohibiting them from being absent from duty without proper authority. The investigation was held as scheduled. By letter dated September 24, 1987 the Carrier notified Claimant that as a result of evidence adduced at the investigation he had been found guilty of the charge and was dismissed from the Carrier's service.

The Organization grieved the discipline. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designed to handle such disputes. However, the dispute remains unresolved, and it is before this Board for final and binding determination.

FINDINGS:

The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act, as amended, 45 U.S.C. §§151 et seq. The Board also finds it has jurisdiction to decide the dispute in this case. The Board further finds that the parties to the dispute, including Claimant, were given due notice of the hearing in this case.

The threshold question in this case is whether the record substantiates Claimant's guilt. As the Carrier emphasizes, Claimant admitted during the investigation that on August 17, 1987 he was absent from his position without authority. Claimant's defense was that he had experienced car trouble while on his way to work which prevented him from reaching a telephone to contact anyone until approximately 10:00 a.m. Having previously experienced Carrier's failure to accept collect calls at other offices, Claimant called his cousin who in turn made a local call to the Carrier informing the Carrier that Claimant would not be at work that day. However, Claimant admitted that he did not attempt to call either of his supervisors collect. Moreover, although Claimant was given the opportunity to submit a telephone bill proving that, in fact, he had called his cousin collect on August 17, Claimant never furnished the Carrier with that

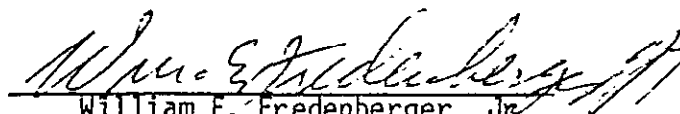
document. We believe in the face of such evidence the Carrier reasonably could conclude that Claimant's excuse was false and that Claimant in fact failed to report for duty without obtaining permission to be absent. Accordingly, we must conclude that the record supports Claimant's guilt.

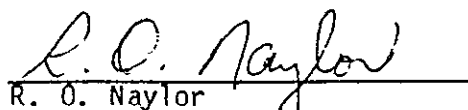
However, we do not believe that permanent dismissal was justified under the facts of this case. We recognize that Claimant was no stranger to Rule 604 and had been warned by the Carrier as to his responsibilities under the rule. Nevertheless, we believe Claimant should be given another opportunity to prove his worth as a reliable employee to the Carrier.


AWARD

Claim sustained to the extent that Claimant shall be restored to the Carrier's service. Claim denied in all other respects.

The Carrier will make this award effective forthwith.

  
William E. Fredenberger, Jr.  
Chairman and Neutral Member

  
R. O. Naylor  
Carrier Member

  
Sol A. Hammons, Jr.  
Employee Member

Dated: At Houston, Texas October 31, 1989.