

PUBLIC LAW BOARD NO. 1795

Award No. 14
Case No. 14

PARTIES TO DISPUTE: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
SOUTHERN PACIFIC TRANSPORTATION COMPANY
(Pacific Lines)

STATEMENT OF CLAIM:

1. That the Carrier violated the provisions of the current Agreement when on June 16, 1976 it suspended Track Laborer Mr. A.R. Garcia pending formal hearing. It further violated the Agreement when on July 7, 1976 it dismissed Claimant on charges not sustained by the hearing record, said action being unduly harsh and in abuse of discretion.

2. That the Carrier reinstate Claimant with seniority and all other rights unimpaired and that he be compensated for all wage loss suffered as a result of his wrongful dismissal.

STATEMENT OF FACTS: In this as in all other cases in this docket, all matters submitted by the principals are before the Referee, these include separate submissions as to the facts presented by each side, complete copies of the transcript of the investigation taken in each case, as well as written presentations of both sides as to their respective individuals contentions in detail as relating to each dispute. The case now before us relates to a Mr. A.R. Garcia, who is the Claimant, and who has been in the service of Carrier as a Track Laborer since August 5, 1971.

On the morning of June 15, 1976 Claimant was regularly assigned to Extra Gang No. 38 with headquarters at Martinez, California on Carrier's Western Division. The Foreman was J.L. Fonseca. On that morning, Extra Gang No. 38 reported to headquarters and was assigned, along with Extra Gang No. 37, whose Foreman was T. Robledo, to work with Tie Gang Extra Gang No. 49 at Pinole, California.

The two gangs were transported to the work site in the truck assigned to Extra Gang No. 37 which was being driven at the time by J.C. Belmonte. At or near the work site at Pinole, Claimant left Truck No. 37 and entered the truck belonging to Tie Gang No. 49, being driven by C. Fields. The latter truck proceeded eastward towards Hercules, quite a distance away. While starting on route to Hercules this truck was intercepted by the one in which Claimant's supervisor, Foreman J.L. Fonseca was traveling. He stopped them and questioned Claimant as to why he was in this truck, to which Claimant stated he replied that he was "going for a pack of cigarettes". Apparently, Foreman Fonseca did not accept this story as valid and instructed him to return immediately to his assigned work location. Foreman Fonseca then continued on his way.

However, Claimant did not obey Foreman Fonseca, for he left truck No. 49, accosted the truck belonging to Gang No. 37 and accompanied driver Belmonte on his round of work from Hercules to Oakland, returning to the work of the Tie Gang at Pinole at about 1:00 p.m. This involved an absence from his

work location from about 10:00 a.m. to 1:00 p.m. It does not appear in the factual recitation that Claimant received any authority to perform any of the above things that he did nor that he was instructed to work with any of the truck drivers with whom he was riding.

In consequence of these occurrences, Claimant was notified on June 16, 1976 by Road Master Mehrwein that he was being suspended from service pending formal investigation. Subsequently, Claimant was notified that he was to appear at a formal hearing to be held at the Roadmaster's office at Martinez on July 1, 1976. The specific charge against Claimant, as contained in the Notice of Investigation, was that he had acted in violation of Rules 801, 810 and 811. These rules read precisely as follows:

"Rule 801: 'Employees will not be retained in the service who are...., insubordinate,...'

"Rule 810: 'Employees must report for duty at the prescribed time and place, remain at their post of duty and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority.'

"Rule 811: 'Employees must not absent themselves from their places....without proper authority.'

In any event the hearing above referred to was held, after which, in a letter dated July 7, 1976, Division Engineer O'Callaghan advised Claimant to the effect that the evidence adduced at the hearing had established his responsibility for violating Rules 801, 810 and 811 and he was, as a result,

notified that he was being dismissed. Thereafter the Organization submitted claims in behalf of Claimant to Carrier throughout the various levels of appeal as established in the Agreement. In each case the appeal of the Organization was denied by Carrier. The claim, therefore, having been denied in its entirety, the position at this point is that Claimant remains dismissed as stated above.

The Organization contends that Claimant was improperly charged with violation of one or other of the Rules which, it claims, did not apply to what happened on the day in question. Secondly it argues that although certain of the things involved did occur, Claimant was not conclusively proven guilty of their violations by the testimony adduced at the investigation. Finally, the Organization contends that the discipline involved, in view of the alleged minor nature of the violations, was exceedingly excessive.

Carrier, on its part, contends that the investigation was fairly and impartially held and properly conducted in all respects, that the evidence adduced conclusively supported the charges against Claimant and, finally, that the penalty of dismissal was fully warranted in this case. Carrier argues that this is particularly true since this is not a first occurrence as respects the Claimant.

Rather than analyse the testimony of each of the witnesses in detail, the following represents a composite of

of practically all of the testimony at the investigation with respect to what Claimant actually did on June 15, 1976:

1. He originally contended that he did not know what his assignment was. However, he traveled to the assignment on a specific truck with a regular Gang to which he was assigned, all of whom knew what the work was as assigned for that day and he, being part of that gang, obviously was similarly aware.

2. He left the scene of the work area without authority from Foreman Fonseca or anyone else.

3. After receiving instructions from Fonseca later on to return to the job site, Claimant switched trucks. This was obviously to avoid compliance, for he had no instructions (or intentions) to proceed any further on the 2nd truck.

4. Neither did he have authority from Foreman Robledo to perform any of the things he claims he did, Foreman Robledo being in charge of both gangs that day.

5. His excuse about wishing to purchase cigarettes was an obvious ploy to which Foreman Fonseca was justified in paying no attention. Throughout the investigation, as a matter of fact, there is no other mention about cigarettes or the purchase of cigarettes.

6. He did not return to the job site, after having left it at about 10 ^{A.M.} p.m., until about 1 o'clock. His total absence for this period was completely unauthorized!

7. He accompanied driver Belmonte to Oakland, a total distance of some 48 miles, without any authority at all from anyone.

8. It is true that he did some work at other work sites, but this work was purely haphazard and had no connection with his assigned job responsibilities nor did he have authority or instruction to do this work. It appears that his thoughts were merely to operate casually based on his own inclination.

We conclude therefore that he had no authority to leave the job site, no authority to travel with or to work with the drivers whom he accompanied, no authority to "pick up" any rides and no authority to remain away from his initial job site for the period from 10 a.m. to 1 p.m. He was not requested to do so; he was not authorized to do so.

Carrier points out further that this is not the first occasion in which Claimant "has allowed his employment to be subordinated to other interests". Carrier asserts (and the Organization does not deny) that on September 20, 1973 Claimant was dismissed from service for sleeping on duty in violation of Rule 810 and for violation of part of Rule 801, pertaining to indifference to duty. At the request of the Organization District Chairman Arosio, some time later, Claimant was reinstated on a leniency basis as of May 17, 1974.

The above summary of the testimony of the witnesses includes in large measure the testimony of the Claimant himself; this will be referred to hereafter in greater detail. Additionally,

Claimant does not deny that he is familiar with the requirements of Rules 801, 810 and 811, each of which was quoted into the record of the investigation.

CONCLUSION AND OPINION: As noted above, we have deliberately compared the composite record in detail of what Claimant actually did on June 15, 1976 with his own testimony as to his version of what occurred. We confess that we find the record somewhat amazing. Claimant does not specifically deny any of the allegations with which he is charged. In effect, he concedes that one way or another he violated Rules 801, 810 and 811 of the General Rules and Regulations. What is amazing, however, is that he does so in so casual a manner. His attitude, as revealed by the record, reflects his personal belief that job assignments and work responsibilities are things that can be ignored at will; that he can with impunity decide what to do as to assigned work (or what not to do) on any particular day; and, finally, disregard specific orders with complete indifference to the obvious requirements of his specific job assignment. Further, that he can go where he pleases, "work" with whomever he chooses, in the complete absence of instructions from superiors that he has any authority to do so.

This is not simply a case of a series of minor unintentional rule violations. This case involves a running sequence of a series of rule violations, each of which, when examined separately, reveal Claimant's attitude of casual indifference to the authority of his superiors, deliberate refusal to obey


specific orders, and the taking upon himself by whim and caprice the right to decide what to do, where to go and who to work with - regardless of the specific assignments.


On the basis of all of the foregoing, therefore, we conclude and find that Claimant was properly found guilty of violating Rules 801, 810 and 811 as charged. Indeed, we find his personal attitude to be akin, if not tantamount to, actual contempt for authority and deliberate indifference to the inherent prerogatives of management responsibility.

Finally, on the question of assessment of proper discipline, we have no choice but to take into account Claimant's poor service record of performance during his comparatively brief period of employment with Carrier of 5 years. This has included his having been dismissed from service on September 20, 1973 for violations of Rule 801 (indifference to duty) and Rule 810 (sleeping on duty). Claimant was reinstated to service on May 17, 1974 on a leniency basis at the request of the Organization. Apparently his attitude since that period of time has improved little, if at all.

Taking all factors into consideration, therefore, we feel impelled to sustain Carrier's dismissal of Claimant in this dispute and we so hold.

AWARD: CLAIM DENIED.


LOUIS NORRIS, Neutral and Chairman


S.E. FLEMING, Organization Member


E.J. HALL, Carrier Member

DATED: San Francisco, Cal.
February 23, 1978.