

PUBLIC LAW BOARD NO. 1925

Award No. 22

Case No. 22

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Southern Pacific Transportation Company
 -Texas and Louisiana Lines-

Statement of Claim: 1. Carrier violated the Agreement when it unfairly, improperly and without just cause dismissed from its service Laborer Fred Anderson on November 9, 1976.

 2. Claimant Laborer Fred Anderson be reinstated with pay for all time lost and with vacation, seniority and other rights unimpaired.

Findings: The Board finds, after hearing upon the whole record and all evidence that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 23, 1977, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, a Section Laborer with five (5) months of service, was dismissed from service November 9, 1976, for failure to follow instructions and his insubordination to the Assistant Division Engineer on that date. The investigation, which was held at Claimant's request on December 21, 1976, failed to cause change in the discipline imposed.

The employees argument on a time limit violation must fall as the record reflects that the claim filed was timely denied and such denial was timely sent by the Division Engineer.

The absence of a procedural bar permits ready review of the merits.

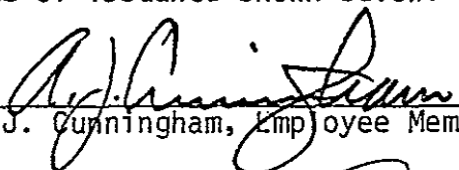
Claimant was a Laborer in Extra Gang 39 and he had been instructed by his foreman, at the outset of the day, to get a claw bar and pull tie spikes. This is a common procedure utilized at the beginning of a work day to permit the gang to get started until the Spike Puller Machine has time to get out ahead of the gang. The Assistant Division Engineer testified that he approached Claimant because he noted that Claimant was talking with the Operator of the Spike Puller Machine. Said Engineer asked Claimant to come back to the rail lifter and start removing tie plates as he had previously been doing during the past several days. Claimant, in response thereto, said that he had been instructed by his foreman to pull spikes instead of taking off tie plates and Claimant insisted, several times, that he was going to do what his foreman had told him. Said Engineer again repeated his instructions and further explained the relationship of such instructions to the successful completion of the work project and that he was not satisfied with the manner in which the job was being handled and that it would be necessary for Claimant to follow his instructions in order to stay on the job. Claimant "arrogantly" replied "What did you say man " whereupon, said Engineer told Claimant to leave the job and "hit the road". Claimant testified that when the Assistant Division Engineer walked up to him he asked Claimant "what are you supposed to be doing?" Claimant replied that he was supposed to be pulling plates, but that he had been instructed by his foreman to pull spikes. The Engineer allegedly said "get your ass back to the Rail lifter and pull those plates". Claimant replied that he couldn't pull spikes and plates at the same time whereupon the Assistant Division Engineer told him to hit the road.

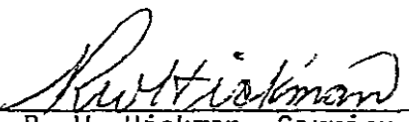
The Board concludes that Claimant received due process, that Carrier did not err where it chose to believe the testimony of its witness rather than that of Claimant. That the substantial evidence adduced does support the Conclusion reached by Carrier as to Claimant Laborer's culpability and

the discipline imposed was not unreasonable for willful insubordination. However, it appears that the act of insubordination here was more technical in nature and was not willful. It resulted more from a combination of a new employee's greenness, his lack of knowledge of Rules, particularly Rule 801, which was never even read to him; and the exuberance of an aggressive Engineer's desire to keep his project working at the highest capacity. The conflict in work orders as between the different levels of authority to a new employee was confusing to say the least. Consequently, the Board reinstates Claimant to service with all rights unimpaired, but without pay for time held out of service subject to passing a return to service physical examination. Claimant should be given a copy of the rules applicable to him, and, if possible, reviewed in order that he clearly understands what is expected of him.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


A. J. Cunningham, Employee Member


R. W. Hickman, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Houston, Texas, May 8, 1978.