

PUBLIC LAW BOARD NO. 1925

Award No. 26

Case No. 26

Docket No. 26

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 effective Agreement by unfairly and without just cause suspended Claimant A. C. Reyna for a period of ten (10) days; August 5 through August 16, 1976.

2. Claimant Reyna be paid for all time lost due to his suspension beginning August 5, 1976 and continuing through August 16, 1976, including overtime, plus pay for time lost on August 20, 1976.

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 had been employed as a Laborer-Driver on Extra Gang No. 35 for five (5) years. He was suspended for a ten (10) day period August 5 through August 16, 1976 because he refused to accept an emergency call to work for Saturday July 31, 1976. His action resulted in a violation of Rules 801 and M-813 of the Rules and Regulation for the Maintenance of Way and Structures.

Here, Carrier failed to prove the charges made against Claimant and that the discipline imposed represents an abuse of discretion. The record reflects that Claimant, an employee of some eleven (11) years, had worked

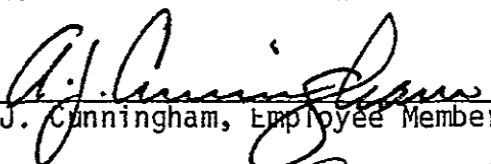
his present assignment for over three (3) years. It was a known fact that Claimant's wife suffered with a heart problem and that Claimant, to the extent consistent with his obligation to protect Carrier's service, spent his off-time at home assisting her. Claimant owned an exemplary service record. He usually worked any required overtime and, in fact, on July 30, the Claimant did work overtime. Additionally, the record reflects that Claimant worked 16 hours overtime on August 5, the day that he was supposed to commence serving his disciplinary suspension from service. Claimant had notified his Track Supervisor that he would be unable to work on Saturday, July 31, 1976.

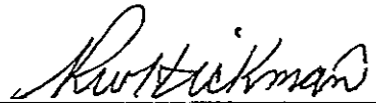
Lastly, Carrier's witness had testified, in effect, that Claimant had not violated Rule 801. The Board finds that Rule M-813 is not applicable to the facts of this case.

Therefore, in the circumstances herein, the claim will be sustained.

Award: Claim sustained.

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.