

PUBLIC LAW BOARD NO. 1925

Award No. 27

Case No. 27
Docket No. 27

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 Mr. H. H. Logan for 10 days beginning August 5, 1976 through August 16, 1976.

2. Claimant Logan be paid for all time lost, including overtime, beginning August 5, 1976 and continuing through August 16, 1976. And that all charges be stricken from his record.

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, an Apprentice Foreman, was working with Extra Gang No. 315 on the San Antonio Division, Friday, July 30, 1976. He was notified about 4:45 p.m. by his Track Supervisor to work overtime on Saturday July 31, 1976 in order to clear up a derailment at San Antonio. Claimant refused on the grounds that he was going out of town. Claimant was notified, August 4, 1976 that such refusal was in Violation of Rules 801 and M-813 of the Rules and Regulation for Maintenance of Way and Structures and that he was therefore suspended for a period of ten (10) days. Claimant's subsequent investigation, which was held on August 23, 1976, caused no change in the discipline assessed.

Rule 801 in part provides:

"Employees will not be retained in service who are....indifferent to duty, insubordinate....."

M-813 - "Employees assigned to specific maintenance duties will notify their superior officer, or the person designated by him, where they may be called and will respond promptly when called. When such employees desire to leave their home station, or assigned territory, they will notify their Superior officer, or the person designated by him, that they will be away, about when they will return, and when possible, where they may be found."

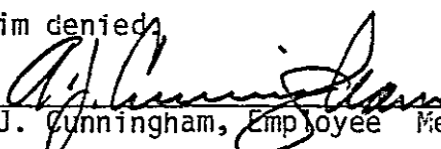
The Board finds that Claimant received a fair and impartial hearing.

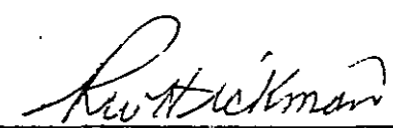
There was sufficient probative evidence adduced to support Carrier's conclusion as to Claimant's culpability. Whether an emergency or not existed is really not an issue here. Claimant was an Apprentice Foreman and as such he had an implicit obligation to set a good example. He should not, as here, have made a subjective determination that there was no emergency and therefore he would not work overtime. Further, no real reason was offered in defense thereof or, in fact, for Claimant's need to be off on said Saturday. While there may be room for thinking that "springing" notice of a need to work overtime at the last moment of the work day, if there be no need for such timing, represents a callous and arbitrary act on the part of the Track Supervisor, yet the fact still remains that Claimant, absent valid reason therefore, failed to obey his instructions. Claimant could, if necessary therefore, have grieved otherwise. Claimant took it upon himself to be insubordinate when he also refused to explain why or where he was going on the date in question.

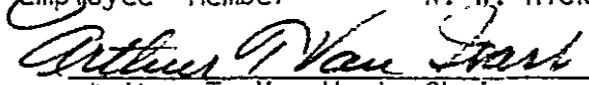
In the circumstances this claim will be denied.

Award:

Claim denied


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.