

PUBLIC LAW BOARD NO. 1925

Award No. 28

Case No. 28

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 when it unfairly and without just cause suspended Claimant R. Munoz on November 1, 1976 to November 29, 1976.

                             2. Claimant Munoz be paid for all time lost, including overtime, from November 1, 1976 through November 29, 1976, and that this charge 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, a Track Laborer, had been employed for almost seven (7) years, and had been stationed at Eagle Lake, Texas working in Extra Gang 211. He was dismissed from service on November 1, 1976, by the Division Engineer for refusing to comply with the instructions of his Roadmaster on October 29, 1976 to remain on the job and work overtime which thus resulted in violation of Rules M-801, M-810 and M-811. An investigation was held upon Claimant's request, on November 23, 1976. As a result thereof the discipline was modified to a suspension and Claimant was reinstated November 29, 1976.

The Rules in question provide:

M-801 - "Employees will not be retained in service who are....indifferent to duty, insubordinate....."

M-810 - "Employees must report for duty at the prescribed time and place, remain at their place 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...."

M-811 - "Employees must not absent themselves from their places, substitute others, or exchange duties without proper authority."

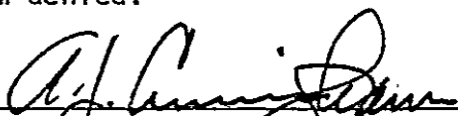

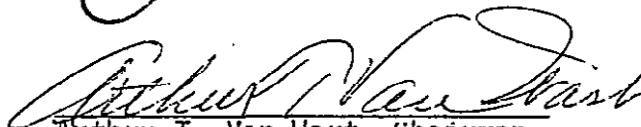
The record reflects that Gang 211 were given instructions on Friday, October 29, 1976, to work overtime. Claimant received such instructions from his Roadmaster as well as his Foreman. Said gang worked four (4) hours overtime. Claimant had worked but one hour thereof when he received a message that his wife had telephoned from home. Claimant thereupon asked his foreman for permission to go home. The foreman testified that he granted same. Claimant Roadmaster testified that about 4:00p.m. on October 29 Claimant came to him and requested that he not be required to work overtime because he had to go out of town for the weekend. Claimant's request was denied. The Roadmaster denied that the foreman told him that he had given Claimant permission to leave early.

Carrier chose to resolve the conflicting testimony by believing that of its Roadmaster. We find such to be a proper exercise of its discretionary right aided by the knowledge that the Roadmaster's testimony was corroborated.

The Board concludes that Claimant having gone to the Roadmaster to request permission to leave early and having been denied same was bound thereby. This is particularly so when Claimant tacitly admitted that no emergency existed when he left early on October 29. Hence Claimant violated the Rules as charged.

In the circumstances the Board finds that the discipline imposed was not unreasonable.

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.