

PUBLIC LAW BOARD NO. 1925

Award No. 29

Case No. 29
Docket No. 29

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 Extra Gang Laborer Thompson from October 20, 1976, to November 8, 1976.

2. Claimant Thompson to be paid for all time lost and his record be cleared of this charge.

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 an Extra Gang Laborer some two months, when he was suspended 19 days from service, October 20, through November 8, 1976, by his Division Engineer for violation of Rule M-810 of the Rules and Regulations for the Maintenance of Way and Structures. Claimant, on October 19, 1976, about 12:50 p.m., had refused to return to work after lunch as did the other members of his gang. The investigation, thereon, which was requested by Claimant, was held November 4, 1976. Carrier concluded as a result thereof, that Claimant was guilty as charged.

Rule M-810, in part pertinent here, reads:

"Employees must....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...."

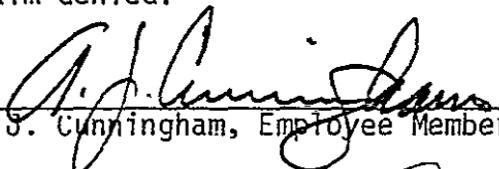
Claimant was given a fair and impartial hearing. The evidence adduced therein was sufficient in quantatum to support Carrier's conclusion that Claimant had refused to go back to work after lunch. Claimant called several employees as witnesses who testified that Claimant told them that he was sick. Claimant offered no other proof of his alleged illness. Carrier's witnesses, an Assistant Roadmaster and the Claimant's Gang Foreman, testified that Claimant simply stated that he was not going back to work and that Claimant never said that he was sick. Carrier chose to accept the testimony of its witnesses as being the more credible. Such is within Carrier's discretionary authority, and is not error.


The Board finds that the discipline imposed, in the circumstances involved, is considered as being reasonable.

The claim will be denied.

Award:

Claim denied.


A. S. Cunningham, Employee Member


R. W. Hickman, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Houston, Texas, May 8, 1978.