

PUBLIC LAW BOARD NO. 1925

Award No. 33

Case No. 34

Docket No. 34

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 dismissing Roadway Machine Operator W. E. McCardell from Carrier's service on March 28, 1977 on unproven charges.

                                 2. Claimant Roadway Machine Operator W. E. McCardell shall now be reinstated and paid for all time lost, beginning March 25, 1977, and continuing until he is reinstated; this charge shall be stricken from his record, and all seniority rights, vacation rights, and all other rights be restored to him on account of Carrier's violation of the Agreement, as referred to in Part 1 of this Claim.

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 System Machine Operator, was dismissed March 28, 1977 for falsification of a report alleging a personal injury in violation of Rule 801. The investigation, which Claimant had requested, was held on August 19, 1977. Such caused no change in the discipline imposed.

The record reflects that after finishing work, around 4 p.m. on March 21, 1977, several members of Gang 40, with which Gang Claimant was working, left the trailers where they were staying and went 4 blocks to a basketball court where they commenced playing "pick-up" basketball. Claimant joined them shortly thereafter. While engaged in a man-to-man defense, Machine

Operator Oliver accidentally elbowed Claimant in the left eye. Claimant's eye commenced bleeding. Claimant told another member of Gang 40, who was playing in the "pick-up" game that he was going to get his eye stitched. Later, Claimant went to Apprentice Foreman Campisano's trailer, about 6:30 p.m., and told said Foreman that he, Claimant, tripped and fell when coming out of his trailer and that he hit his left eye on a wooden pallet. Claimant was taken by said Foreman to the doctor and received 3 stitches on his left eye. Claimant filled out the pertinent questions on Carrier's Form CS-2611 along the lines of what he had told Foreman a bill for Campisano. Claimant thereafter received \$19.00 by mail. Claimant admitted that he participated in the "pick-up" basketball game, but he denied that he was injured in that game.

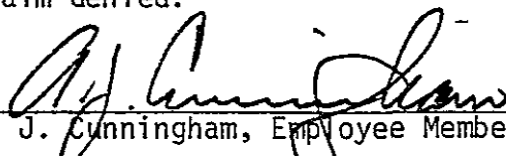
Rule 801, in pertinent part, reads:

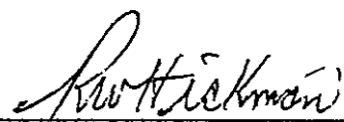
"Employees will not be retained in service who are.....dishonest...."


The Board finds that Claimant was accorded due process, that sufficient credible, competent and probative evidence was adduced to support Carrier's conclusions of Claimant's guilt and 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.