

PUBLIC LAW BOARD NO. 1925

Award No. 35

Case No. 36  
Docket No. 36

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 unjustly dismissing Assistant Foreman Jesse Perez from its service on April 15, 1977.

2. Claimant Perez shall be reinstated to his former position with pay for all time lost and with all seniority, vacation and other rights unimpaired.

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 Extra Gang Foreman, was dismissed from service April 15, 1977 for his failure to act as relief foreman on the Galveston Roadmaster's district on April 11, 1977, when so scheduled, which resulted in a violation of Rule M-810 of the Rules and Regulations for the Maintenance of Way and Structures.

Said Rule, in pertinent part provides,

"Employees must report for duty at the prescribed time and place, 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.... Continued failure by employees to protect their employment shall be sufficient cause for dismissal....."

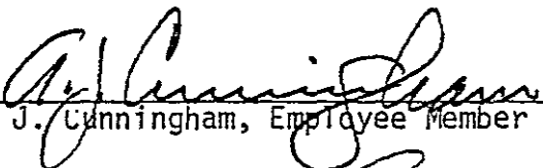
The investigation held on May 10, 1977, at Claimant's request, failed to cause any change in the discipline.

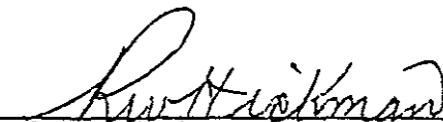
The Board finds, that Claimant received a fair and impartial hearing. There was sufficient evidence adduced to support Carrier's conclusions as to Claimant's failure.


The Board finds however, that there are circumstances present which serve to mitigate the discipline assessed. The manner in which the change in vacation schedules occurred, whereby Claimant was to line up for the vacation vacancy of Extra Gang Foreman P. R. Flores, contributed to his failure to protect said vacancy. Consequently, Claimant is returned to service with all service rights unimpaired, but without pay for time held out of service subject to passing the usual return to service physical examination.

Award: Claim disposed of as per findings.

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.