

PUBLIC LAW BOARD NO. 1925

Award No. 37

Case No. 32

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 San Antonio Division Machine Operator Helper Mr. Ronnie J. Farrar, was dismissed from Carrier's service on February 15, 1977, on the charge that he was absent from his assignment on February 9, 1977, without proper authority, and when questioned on February 9, 1977, concerning his absence on that date, his attitude indicated a complete indifference to duty, in violation of Carrier's Rules M-810, M-811 and Rule 802.

2. Claimant Ronnie J. Farrar shall now be returned to work, with pay for all time lost and with 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, a Roadway Machine Operator was dismissed, after almost six (6) years of service, for being absent from his assignment on February 9, 1977 without proper authority and when questioned thereon, Claimant's attitude indicated an indifference to duty, all of which resulted in violation of Rule M-802, M-810 and M-811. The investigation held at Claimant's request on March 3, 1977 gave no cause to change the discipline imposed.

The Rules in question, in pertinent part, provide:

"M-802 - Indifference to duty, or to the performance of duty, will not be condoned....."

"M-810 - 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. They must not engage in other business which interferes with their performance of service with the company unless advance written permission is obtained from the proper officer.

Continued failure by employees to protect their employment shall be sufficient cause for dismissal.

Employees must not sleep while on duty. Lying down or assuming a reclining position, with eyes closed or eyes covered or concealed, will be considered sleeping."

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

Claimant was accorded due process.

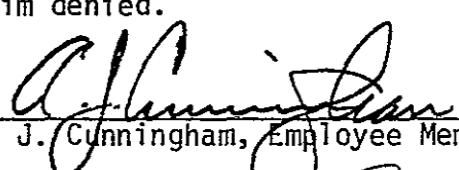
There was sufficient evidence adduced at the investigation to support Carrier's conclusions. Claimant admitted that he did not report for duty February 9, 1977, that he did not have authority to be absent and that he failed to advise his supervisor or foreman that he would be absent on February 9, 1977. The admission of guilt, albeit tacitly, of the Rule violations in reality ends the trial.

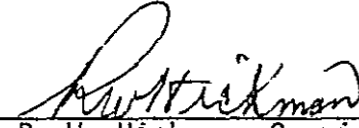
The discipline imposed, in view of Claimant's record, which includes the fact that he was previously suspended July 7, 1976 for violation of Rules M0801 and M-810, was not unreasonable.

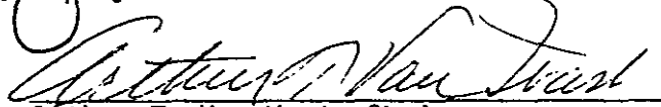
In the circumstances this claim will be denied.

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 9, 1978.