

PUBLIC LAW BOARD NO. 1925

Award No. 6

Case No. 6

File No. MW-76-39

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 on March 9, 1976, Extra Gang Foreman A. O. Hernandez was improperly dismissed without just and sufficient cause on charges unproven.

2. Claimant Extra Gang Foreman A. O. Hernandez be now reinstated with seniority, vacation, fringe benefits and other rights unimpaired and be compensated for all time lost on this account.

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 was Foreman of System Extra Gang 44, working on the Dallas-Austin Division Seniority District. He was absent from his assignment February 17, 19 and 20, 1976. Claimant discovered when calling in time for two (2) other men that his name was left off the payroll for the second period of the February time roll. He called the Roadmaster's clerk and told him to show his time the

same as time worked by Laborer Driver M. Henry. This resulted in overtime and holiday pay for time for which Claimant did not qualify or did not work.

Claimant as a result thereof was dismissed from service March 4, 1976, for violation of Rule 801. He requested and was granted a hearing. Carrier as a result thereof, concluded that Claimant was guilty as charged.

Said Rule 801 in pertinent part provides:

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

The Board finds that Claimant received due process. The transcript reflects that sufficient credible and probative evidence was adduced to provide support for Carrier's conclusion as to Claimant's culpability for, in effect, falsifying time records. Dismissal is not a penalty which exceeds the broad disciplinary latitude possessed by Carrier in serious offenses. However, the Board finds that there is mitigating evidence as to Claimant's intent. It would appear that the original information might possibly be an error in communication without willful intent to defraud Carrier.

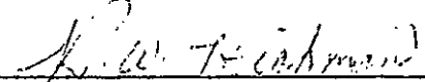
Claimant did make an attempt to correct the overpayment when made aware thereof. Claimant to this extent will be given the benefit of any doubt. Therefore, subject to passing a return to service physical examination, he is restored to service with all rights

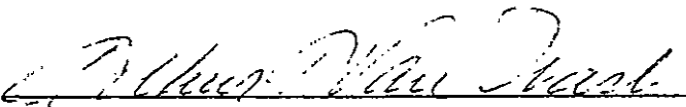
unimpaired but without pay for any time held out of service. The claim is otherwise denied.

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 Ward, Chairman
and Neutral Member

Issued at Falmouth, Massachusetts, September 7, 1977.