

Award No. 13

Case No. 14

Docket No. MW-78-33

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 System Track Foreman Pete Galindo was unjustly dismissed on January 6, 1978.
2. Claimant Pete Galindo be reinstated to his former position, with pay for all time lost and with vacation, seniority and all other rights unimpaired.

Findings The Board, after hearing upon the whole record and all evidence, finds 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 May 22, 1978, 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 a System Track Foreman who was dismissed from service by his Division Engineer by letter, dated January 6, 1978, which read as follows:

"During the first half of December, 1977 you showed time on the timeroll for L. A. Castro, P. S. Zavala and S. R. Garza for days which they did not work. You did this intentionally and to gain favors from these men. Your action was dishonest and is in violation of Rule 801 of the Rules and Regulations for the Maintenance of Way and Structures. Rule 801 reads in part as follows:

Rule 801:

'Employees will not be retained in the service who are...dishonest...

Any act ofmisconduct.....affecting the interest of the company is sufficient cause for dismissal....."

Claimant, on January 10, 1978, requested a hearing which was granted. The hearing was held January 25, 1978 and based on the evidence adduced thereat Carrier concluded Claimant as being guilty as charged. He was so advised on February 1, 1978 by his Division Engineer.

The Board finds that Claimant was accorded a fair hearing.

There was sufficient evidence adduced to support Carrier's conclusion that Claimant, the Foreman who was in charge of work and timekeeping on Steel Gang #40, had, in fact, during the first half of December 1977, placed three men on the time roll "CS201" that were not present at work. Offered in testimony were written statements, given by the three employees (Laborers) attesting therein that each was absent and that they had made arrangements to be shown on time rolls as working. Said statements were signed before witnesses. They appeared at the investigation. One of the laborers, L. A. Castro, testified that he did not work during the period December 12 through 16th, that he was off, that he was paid therefore and that Claimant had asked him for money and that he gave Claimant \$80.00. Another of the three, Mr. Garza, a Laborer Operator, testified that he had missed work, December 5 through December 9th, and that he had paid therefore. The third such employee, P. S. Zabala, a laborer testified that he missed time during the first half of December, i.e. December 12th through the 16th, and that he was paid for those four days. Claimant, in his testimony, admitted that Mr. Garza was not working, and was not present, on each of those days for which he was paid. Claimant testified the fact that it was shown on the payrolls was in error.

As to the conflict in the testimony, the Board must rely on the hearing officer to ascertain the credibility of the witnesses through their conduct and demeanor which was done here. As pointed out in Third Division Award 13475 (McGovern)

"There is no evidence in this record that the management representative had any ulterior motive or deliberately and with malice contrived to harm this Claimant. We are simply confronted with a conflict of testimony. This Board is unable to resolve it. We have no way of judging the credibility of the witnesses. We did not observe their conduct and demeanor. The hearing officer did and in consideration of that fact and on the basis of the testimony made his decision. We are unable to find that management has acted in an "arbitrary, whimsical or capricious way, and accordingly will deny the claim."

As to the discipline imposed, the Board Third Division Award 18106 (Devine) held

"In the investigation there was substantial evidence in support of the charge, and, considering the nature of the offense (falsification of payroll records), there is no proper basis for disturbing the action of the Carrier."

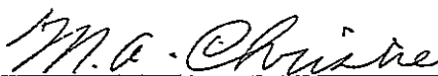
Similarly, Second Division Award 1756 (Carter), which involved a claim of an employee dismissed for falsifying a claim for pay, held therein:

"...The offense committed by this Claimant consisted of obtaining eight hours' pay by false pretenses and a fraudulent attempt to secure twelve hours at overtime rates. This involves moral turpitude. The carrier has a right to expect its employees to be honest whether they are strictly supervised or not. For the Board to restore an employee's position after he has been apprehended in defrauding the carrier is not justified. Employees make mistakes the same as everybody else and this Board has restored employees when the discipline appears to have served its purpose. But when the offense involves turpitude, the carrier and not this Board should determine whether the risks inherent in the reinstatement of such an employee are to be again assumed by the carrier."

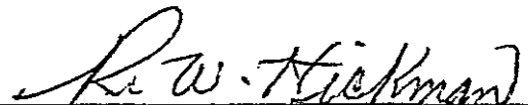
We find that the discipline assessed Claimant was proper and justified.

Therefor, this Claim will be denied.

Award Claim denied.



M. A. Christie, Employee Member



R. W. Hickman, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Wilmington, Delaware, March 31, 1979.