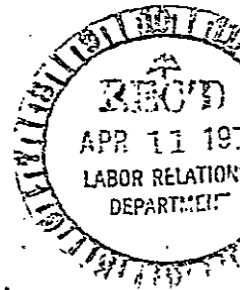


Award No. 16

Case No. 17

Docket No. MW-78-36



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 when System Welder F. M. Lopez was unjustly dismissed on January 3, 1978.
2. Claimant F. M. Lopez be reinstated to his former position, with pay for all time lost and with seniority, vacation and all others 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 Welder received the following letter dated January 3, 1978:

"You are dismissed from the service of Southern Pacific Transportation Company for falsifying the timeroll on December 5, 1977, which is in violation of Rule 801 of General Rules and Regulations of General Notice, effective October 31, 1976, of Southern Pacific Transportation Company, which read as follows:

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

Please surrender any company property you may have in your possession to roadmaster's office in Beaumont, Texas."

Claimant requested and was granted a hearing on January 26, 1978. As a result of the evidence adduced thereat Carrier concluded that Claimant was guilty as charged. Such decision thereon was rendered January 30, 1978.

Carrier offered, during appeal of Claimant's case, on August 24, 1978, to reinstate Claimant on a leniency basis, but without pay for time lost. Such offer was conveyed to Claimant and he refused the offer. Carrier notified Claimant, on September 12, 1978, that he was being reinstated to service and

that an appointment had been made for him to take a return to work physical examination. Claimant failed to show up for such appointment. Claimant was advised in writing, on October 13, 1978 of his reinstatement, subject to his passing the required physical examination and that an appointment had again been made for his return to work physical examination.

The Board finds that Claimant received a fair and impartial hearing. Claimant was fairly and competently represented, he faced his accusers and he subsequently exercised his right of appeal.

There was sufficient evidence adduced at the investigation, including Claimant's admissions, to support Carrier's conclusion as to his culpability. The testimony reflected that the hours of work were from 7:00 AM till 3:30 PM. Claimant showed up at the job site at 10:00 AM on December 5, 1977, although he had apparently shown up at Dayton at 7:45 AM. Claimant was thereupon advised that he was not being permitted to work and was sent back to the trailers. Claimant posted 8 hours on his timeroll for December 5, 1978. Claimant admitted that he did not report for duty at the prescribed time and place and that he did show up at 10:00 AM, instead of 7:00 AM, when the gang had gone to work. Claimant alleged that he was authorized by Mr. Speights, a Welding Supervisor, to mark the 8 hours on his timeroll. However, Mr. Speights recollection of such conversation was that he thought that Welder Lopez would get paid for December 5, 1977, but for Welder Lopez to check with the Track Foreman in charge of the work at ~~None~~. Claimant also admitted that he understood who approved the timeroll and that it was not the welding Supervisor. The Board finds that on the basis of this record Claimant was not authorized to put in the disputed eight (8) hours on his own timeroll.

While there may have been a basis for a possible misunderstanding, Carrier did make an offer to put Claimant back on a leniency basis and Claimant, in effect,

had refused it. We can only conclude therefrom that such refusal is but a reflection of imprudent judgment. Consequently, we are impelled to find that this Claim should be denied.

Award Claim denied.

M. A. Christie

M. A. Christie, Employee Member

R. W. Hickman

R. W. Hickman, Carrier Member

Arthur T. Van Wart

Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Wilmington, Delaware, March 31, 1979.