

PUBLIC LAW BOARD NO. 2182

Award No. 18

Case No. 19

Docket No. MW-78-48

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 B&B Assistant Foreman Luis R. Rodriguez was unjustly dismissed on January 12, 1978.
2. Claimant Luis R. Rodriguez be reinstated to his former position with pay for all time lost and with all vacation, seniority and 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, on January 10, 1978, was an Assistant B&B Foreman assigned to Steel Gang No. 14. He had been assigned to Trailer ED-1494 as living quarters. Said trailer was parked on Company property at Marfa, Texas. While off-duty, on the evening of January 10, 1978, Claimant and several of his co-workers were playing pool at the Perro Palace Lounge at Marfa. The Gang Foreman, who had cooked some stew went to said Lounge about 11:00 PM and notified the men that supper was ready. They came back to Trailer ED-1494 about midnight. About 10 minutes later two shots were fired and the Foreman saw Claimant standing in the trailer with a 30-30 rifle in his possession and one bullet therefrom had penetrated the instep of the right foot of Assistant Machine Operator Ruben Marquez.

Claimant was dismissed by letter of January 12, 1978, reading in part as follows:

"On the evening of January 10, 1978, when off duty, you, and a number of fellow employees were in Trailer ED-1494; and an incident occurred shortly after midnight or at approximately 12:10 AM, January 11, 1978, when a shot from a rifle in your possession penetrated the instep of the right foot of System Machine Operator Ruben Marquez.

For your responsibility for having firearms in your possession on Company property, resulting in accident referred to above, which is in violation of Rules 804 and 801 of Section VI "General Regulations" of Rules and Regulations for the Maintenance of Way and Structures, you are dismissed from the service of Southern Pacific Transportation Company, effective January 11, 1978...."

Rules referred to read as follows:

"801. Employees will not be retained in the service who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who conduct themselves in a manner which would subject the railroad to criticism.

"Any act of hostility, misconduct or willful disregard or negligence affecting the interests of the Company is sufficient cause for dismissal and must be reported."

"804. Unless authorized by an officer of the Company, employees are forbidden to have firearms, or any other dangerous weapon in their possession while on the property."

The Board finds that Claimant was accorded the due process to which he was entitled under his Agreement.

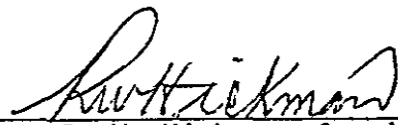
There was sufficient evidence adduced to support the conclusion of Carrier as to Claimant's culpability.

The Board in the circumstances finds that the discipline assessed was not unreasonable. This Claim will be denied.

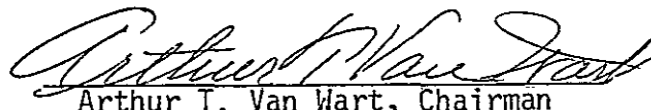
Award Claim denied.



M. A. Christie, Employee Member



R. W. Hickman, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member