

Award No. 19

Case No. 20

Docket No. MW-78-53

Parties Brotherhood of Maintenance of Way Employes

to and

Dispute Southern Pacific Transportation Company
-Texas and Louisiana Lines-

Statement of Claim 1. Carrier violated the effective agreement when Laborer Driver W. S. Alexander was unjustly suspended from January 23, 1978 through February 10, 1978.
2. Claimant W. S. Alexander's record be cleared and he be compensated for all time lost, a total of 120 hours at the laborer driver's straight time rate of pay.

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 Laborer-Driver with Extra Gang 131 on the Lafayette Division.

As of January 19, 1978, he had been a Laborer-Driver for some nine years.

Claimant received the following letter from his Division Engineer under date of January 19, 1978.

"You are suspended from the service of Southern Pacific Transportation Company for a period of fifteen (15) working days, beginning Monday, January 23, 1978, for having a vehicular accident while driving company truck SP 2093 on January 6, 1978, in Lafayette, La., and not reporting this accident, which are violations of those portions of Rules M and 801 of General Rules and Regulations of General Notice effective October 31, 1976, of Southern Pacific Transportation Company which read as follows:

"M. Carelessness by employees will not be condoned and they must exercise care to avoid injury to themselves or others... Employee and his immediate superiors must thereafter, without delay, and prior to completion of tour of duty, complete required statements to proper authority."

'801. Employees will not be retained in the service who are careless of the safety of themselves and others.... Any act ofnegligence affecting the interests of the company is sufficient cause for dismissal and must be reported.'

You are to return to duty with your assigned gang at the designated time on February 13, 1978."

Claimant requested a hearing, which was granted and held on February 9, 1978. As a result thereof Carrier concluded that Claimant was guilty as charged and the discipline was sustained.

Claimant was accorded a fair and impartial hearing.

There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's guilt in being involved in the automobile accident. It reflected that after Claimant received a signal from "Leo", Claimant started backing up and, according to his statement, "evidently the vehicle must have pulled behind me while waiting for them to clear switching. I started backing after signal and that is when I heard the horn blow. That is when I stopped and got down and the vehicle was behind the truck."

However, as to that aspect of the charge that he didn't make out the accident report until after the inquiry, such at best can merely represent a technical violation. The testimony in this connection does show that Claimant did report the accident to his immediate supervisor, Track Foreman, T. F. Miller, immediately after the accident occurred on January 6. The record also shows that Foreman Miller had notified the Special Agent, who compiled a report of the accident, and that Foreman Miller also had notified Acting Roadmaster J. L. Corvelle, his immediate supervisor, of the accident.

The Board concludes that in view of the circumstances above, the discipline assessed was excessive. Therefore, under the circumstances it is reduced to 60 hours. Claimant should therefore be paid 60 hours at Laborer-Driver's rate of pay as an adjustment of this claim.

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.

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.