

PL Board No. 2182

Award No. 22

Case No. 23

Docket No. MW-78-66

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 Laborer D. Lopez was unjustly dismissed March 2, 1978.
2. Claimant D. Lopez be reinstated to his former position, with pay for all time lost and with all seniority, vacation and other rights restored.

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, a Laborer on Extra Gang 417 on the Houston Division, received a letter dated March 6, 1978 from his Division Engineer reading as follows:

"On Thursday, March 2, 1978 at 7:30 PM you were instructed by Foreman J. Jordan to assist in changing out broken rails. You left the job site without authority which is in violation of Rules 801 and 810 of the General Rules and Regulations of the Southern Pacific Transportation Company, as posted by General Notice, effective October 31, 1976, which read in part as follows:

(Rule 801:

"Employees will not be retained in the service who are...insubordinate..."

Rule 810.

"Employees must....remain at their post of duty...during their tour of duty. They must not absent themselves from their employment without proper authority...."

You are dismissed from the service of the Southern Pacific Transportation Company and are instructed to return any Company property which you may have in your possession to Roadmaster J. A. Flores at Hempstead, Texas."

Claimant requested and was granted a hearing on March 29, 1978. As a result

thereof Carrier concluded that there was sufficient evidence to support its conclusion that Claimant was guilty as charged. Claimant was advised to this effect on March 31, 1978.

The Board finds that Claimant was accorded the due process provided in his Agreement.

There was sufficient competent and credible evidence adduced to support the conclusions reached by Carrier. The facts of the record reflect that Claimant's Foreman had announced and he told his gang to wait at the office while he went and talked to the Dispatcher. The Foreman told them to load rail. When the Foreman got back to where the rail was being loaded two members of his gang, L. Garcia and Claimant Lopez were gone.

Carrier in assessing discipline assessed Mr. Garcia only five days while dismissing Claimant. However, Mr. Garcia possessed a clear record. Claimant Lopez on the other hand had been suspended five days in January 1977 for violating Rule 810. He was again suspended from February 7 through February 22 for violation of Rule 810. In fact, Claimant had been dismissed and and was reinstated on a leniency basis.

The Board in the circumstances finds the discipline assessed to have been reasonable. This Claim will 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.