

PUBLIC LAW BOARD NO. 2444

Award No. 10

Case No. 16

Docket No. MW 78-162

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 H. L. Mitchell was unjustly dismissed September 13, 1978.
2. Claimant H. L. Mitchell shall be reinstated to his former position, with pay for all time lost and with all seniority, vacation, insurance and all other rights unimpaired due to his being unjustly dismissed by letter dated September 13, 1978.

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 July 19, 1979, 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 track laborer, had been employed by Carrier approximately one year. He was dismissed on September 13, 1978 for his absence without authority on September 6, 7, 8, 11 and 12, 1978 in violation of Rule M810 of the Rules and Regulations of the Southern Pacific Transportation Company.

The defense herein is that Claimant went to jail on September 7th, that he was not allowed to use the telephone in order to notify someone in authority. He was in jail September 8 through 12, 1978.

It has long been held, generally speaking, that incarceration does not constitute an unavoidable absence for good cause. See Second Division Awards 4689 and 6606, Third Division Awards 18816 and 19568 amongst others.

The essence of such Awards is best summarized by Third Division Award 18816 (Hayes) which, in pertinent part, held:

"Where there is an apparent violation of Rule 404 by a Claimant who is incarcerated and unable to notify Carrier of his inability to report for work, in order to be relieved of the consequences of such violation Claimant must have a plausible explanation of events that might lead a reasonable man to deduce that incarceration was not primarily the result of Claimant's own wrong doing. No such explanation was ever furnished the Carrier. We do not mean to suggest here that the burden imposed on Claimant at the hearing must be so great to amount to proof beyond a reasonable doubt or proof by a preponderance of evidence, but mere silence on the facts relating to arrest and detention is not enough to warrant a putting aside the operation of the rule."

In the circumstances herein we find that Claimant was accorded due process to which he was entitled.

There was sufficient evidence adduced to support Carrier's conclusion that Claimant was in violation of Rule M810. The discipline assessed is found to be reasonable. This claim will be denied.


Award: Claim denied.



M. A. Christie, Employee Member



C. B. Goyne, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, February 7, 1980.