

PUBLIC LAW BOARD NO. 2444

Award No. 13

Case No. 20

Docket No. MW 79-18

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 Mr. C. J. Kately was unjustly dismissed on November 22, 1978.
2. Claimant C. J. Kately shall be reinstated to his former position with pay for all time lost, with all seniority, vacation and all other rights unimpaired due to his being unjustly dismissed.

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 Laborer-Driver was dismissed November 22, 1978 for being absent without proper authority on November 17th and 20, 1978, which was in violation of Rule M810. Claimant requested and was granted a hearing under Article 14 of his Agreement. The hearing was finally held on December 19, 1978. As a result thereof the Division Engineer sustained the dismissal of Claimant.

The record reflects that Claimant admitted that he did not report for duty on November 17th or 20th and that he did not have permission from his foreman and roadmaster to be off on those days.

When, as here, there has been an admission of guilt, there is nothing for the Board to do but to ascertain whether the discipline assessed was unreasonable.

We find that the Claimant had a propensity for not protecting his

his employment. In view of his past record in this connection which reflects that he was in fact absent on October 3rd, November 1st, 2nd, 6th, 7th and 8th in 1978, that he was aware of Rule M810 and that Claimant had been dismissed for identical rule violation on August 24, 1978 and reinstated to service on a leniency basis. We are impelled in such circumstances to find that the discipline assessed is reasonable. In fact, we find that Award No. 374 of Public Law Board No. 717 (Criswell), quite appropo here. This Award, in part, held:

"This Claimant appears to be one of many who seek work with the Railroad and soon thereafter, act with total disregard for the needs of the Carrier's service. If there was no need for the position the Carrier would not have it existing. The strange theory that employes, as did this Claimant, can continually miss calls and lay off for no good reason without penalty is in error..."

The Carrier is not obligated to provide a haven for those who have no desire to protect their job. In the circumstances, this claim will be denied.

- Award: Claim denied.

M. A. Christie

M. A. Christie, Employee Member

C. B. Goyne

C. B. Goyne, Carrier Member

Arthur T. Van Wart

Arthur T. Van Wart, Chairman
and Neutral Member

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