

PUBLIC LAW BOARD NO. 2444

Award No. 15

Case No. 22

Docket No. MW 79-20

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute: Southern Pacific Transportation Company
(Texas and Louisiana Lines)

Statement of 1. Carrier violated the effective Agreement when Track Foreman
of Jessie Perez was unjustly dismissed December 4, 1978.

Claim: 2. Claimant Jesse Perez shall be reinstated to his former position
with pay for all time lost, and with all seniority, vacation
and other rights unimpaired, and that this charge be stricken
from his record.

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.

The Division Engineer, under date of December 4, 1978, sent Claimant
the following letter:

"On November 16, 1978 you had left your assignment before 4:10 p.m.,
and the timeroll which you made for November 16, 1978 showed that
you had worked 8 hours. Your regular assigned working hours are
from 8:00 a.m. to 4:30 p.m. On November 27, 1978 you were issued
45 demerits for arriving late to work, yet your timeroll shows that
you worked 8 hours on November 27, 1978. Leaving your job
assignment on November 16, 1978 before your regular quitting time
at 4:30 p.m. is in violation of Rule M810 of the rules and
regulations for the Maintenance of Way and Structures; and placing
time on the timeroll which was not worked on November 16 and 27,
1978 is in violation of Rule 801 of the rules and regulations for
the Maintenance of Way and Structures. On December 1, 1978 you
failed to protect your job at the regular assigned starting time
of 8:00 a.m. and did not have authority to be absent. This is in
violation of Rule M810 of the rules and regulations for the
Maintenance of Way and Structures.

Rules 810 and M810 are quoted in part as follows:

Rule 801:

'Employees will not be retained in the service who are.... dishonest....'

Rule M810:

'Employees must report for duty at the prescribed time and place They must not absent themselves from their employment without proper authority....'

You are dismissed from the service of the Southern Pacific Transportation Company for your violation of Rules 810 and M810. You are instructed to turn in all company property which is in your possession to Roadmaster B. L. Reinhardt at Rosenberg, Texas."

Claimant requested and was granted a hearing which was held on January 9, 1979. Thereafter, Claimant Track Foreman was advised:

"The facts adduced at your hearing which was held on January 9, 1979 support the charges against you which were contained in my letter dated December 4, 1978; therefore, your dismissal will stand."

The Board finds that Claimant was accorded due process to which he was entitled under Article 14 - Discipline and Grievances.

There was sufficient evidence adduced to support the conclusions reached by Carrier. As pointed out in Third Division Award 16678 (Perelson):

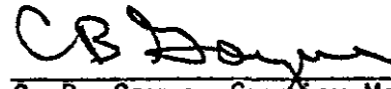
"...this Board has held on any number of occasions that our function in discipline cases is not to substitute our judgment for that of the Carrier or to decide the manner in accord with what we might or might not have done had it been ours in the first instance to determine. We do not pass upon the question whether, without weighing it, there is some substantial evidence in the record to sustain a finding of guilty. Once that question is decided in the affirmative the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier and we are not warranted in disturbing the penalty imposed unless we can say that it clearly appears from the record that the action of the Carrier with respect thereto was so unjust, unreasonable or arbitrary as to constitute an abuse of discretion. Whether or not the penalty imposed is justified depends upon many factors and circumstances in each case. In order for this Board to overrule, reverse, set aside or reduce the penalty imposed,

it is incumbent upon the Claimant to show that the Carrier in assessing the penalty was vindictive, arbitrary or malicious."

We find that the discipline assessed was not unreasonable. This represents Claimant's third dismissal in a period of three years. Discipline obviously has not served its intended purpose. In the circumstances, 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.