

PUBLIC LAW BOARD NO. 2444

Award No. 16

Case No. 23

Docket No. MW 79-22

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 Houston Division Laborer C. J. Alexander was dismissed on December 7, 1978, on unproven charges.
2. Claimant C. J. Alexander shall be reinstated to his former position with pay for all time lost, vacation, seniority and all other rights unimpaired.

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, on December 6, 1978, was working as a laborer in Extra Gang 56. As a result of an incident occurring thereon his Division Engineer sent Claimant the following letter dated December 7, 1978:

"On December 6, 1978 at approximately 3:30 p.m., you were instructed by your Assistant Foreman, Mr. Milton Abraham, to continue with your work in repairing the W. R. Grace Company switch. You refused to continue working and told the Assistant Foreman that you would go and sit in the bus until the work was finished. Your refusal to follow Mr. Abraham's instructions is in violation of Rule 810 of the general rules and regulations of the Southern Pacific Transportation Company, as posted by General Notice, effective April 1, 1978, which reads in part as follows:

Rule 801:

'Employes will not be retained in the service who are insubordinate....'

For your violation of Rule 801, you are dismissed from the service of the Southern Pacific Transportation Company and are instructed to return all company property you have in your possession to Roadmaster E. G. Bass at 5820 Wallisville Road, Houston, Texas."

Claimant requested and was granted a hearing. As a result thereof, the Division Engineer wrote Claimant on January 15, 1979 as follows:

"The hearing which was held for you on January 10, 1979 shows that you were guilty of the charges contained in my letter dated December 7, 1978; therefore, your dismissal will stand."

Here, Carrier, as the trier of the facts, decided the conflict in testimony as between Claimant and his Assistant Foreman. Claimant testified that he and another man refused to work on December 6th. Claimant allegedly refused because he had to take his son to the doctor. However, the Foreman denied Claimant had so told him. The other man involved was also disciplined for his refusal to work overtime the same as had Claimant.

The Board finds that there was sufficient evidence adduced to support Carrier's conclusion as to Claimant's insubordination. Insubordination is a serious offense and when as here the fact of insubordination is established, the discipline of dismissal is generally assessed.

We find that the Claimant was accorded due process.

There was sufficient evidence to support Carrier's conclusion and that the discipline assessed was not unreasonable. In the circumstances, in view of Claimant's record, 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