

PUBLIC LAW BOARD NO. 2444

Award No. 17

Case No. 27

Docket No. MW 79-44

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 Marvin Curtis, Jr. was unjustly dismissed on February 2, 1979.
2. Claimant Marvin Curtis, Jr. 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 Laborer, as a result of an incident on January 31, 1979, received the following letter from his Division Superintendent dated February 2, 1979 reading:

"On January 31, 1979 you refused to follow the foreman's instructions and made threats against the foreman and other employees at the work site; and when told to leave the property, you refused to do so. This is in violation of Rules 801 and 802 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:

801:

'Employees will not be retained in the service who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who conduct themselves in a manner which would subject the railroad to criticism.

Any act of hostility, misconduct or willful disregard or negligence affecting the interests of the Company is sufficient cause for dismissal and must be reported.'

Rule 802:

'Indifference to duty, or to the performance of duty, will not be condoned.

Courteous deportment is required of all employes in their dealings with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden....'

For your violation of Rules 801 and 802, 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 J. W. Duke at 1314 Semmes Street, Houston, Texas."

Claimant requested and was granted a hearing which was held on February 14, 1979. Carrier concluded, as a result thereof, that it would sustain the dismissal originally made February 2, 1979.

The conflict in the testimony of the witnesses was properly resolved by Carrier as the trier of facts. We find no evidence that in so doing Carrier had acted arbitrarily or capriciously.

We find that Claimant did not comply with the work instructions given him by Apprentice Foreman Vario. We also find that Claimant did, in fact, threaten the life of said Foreman. Claimant likewise refused a direct order from Foreman Pledger to leave the property when ordered to do so by Foreman Pledger. In all, Claimant presented a threatening image while obstructing the performance of work. He was a disrupting influence on his fellow employees with the obvious incidious effect of causing a slowdown in work productivity.

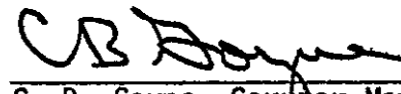
We find that Claimant was accorded due process.

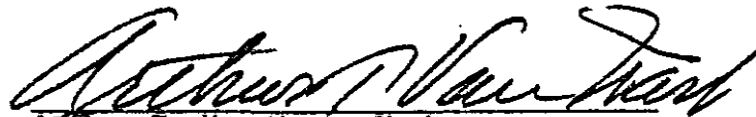
There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's guilt.

The discipline assessed is held 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.