

PUBLIC LAW BOARD NO. 2444

Award No. 18

Case No. 28

Docket No. MW 79-49

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 Track Laborer Jessie B. Shaw was unjustly dismissed January 22, 1979.
2. Claimant Jessie B. Shaw shall be reinstated to his former position with all seniority, vacation rights, insurance coverage and any other rights accruing to him unimpaired in addition to all compensation lost commencing the date that he is released by his physician to return to service and to run concurrently until Mr. Shaw is restored to service.

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 Track Laborer Shaw was dismissed by his Division Engineer on January 22, 1979 for "your failure to comply with instructions contained in my letter of January 12, 1979....for being absent from your employment as track laborer, Lafayette Division, without proper authority on January 18 and 19, 1979, which is a violation of Rule M810..."

Claimant requested and was granted a hearing which was held on February 14, 1979. Claimant was advised on February 20, 1979, that:

"I have reviewed the transcript of the hearing and this is to advise you that the position as stated in my letter of January 22, 1979 is sustained."

The record reflects that Claimant sustained an on-job injury to his left

foot on November 13, 1978. As a result of Claimant's treatment by several physicians, the exchange of correspondence in connection therewith, including the advice that he was okay for light duty, it would appear a misunderstanding arose and Claimant failed to respond when instructed to do so by his supervisor.

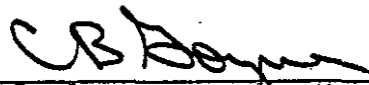
In the particular circumstances involved herein, and absent a showing that Claimant was or is physically able to work, the Board will reinstate Claimant to service with all rights unimpaired, but without any pay for time out of service, subject to his passing the necessary return to service examinations.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of issuance shown below.



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.