

PUBLIC LAW BOARD NO. 2444

Award No. 25

Case No. 34

Docket No. MW 79-70

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  
E. J. Flores was unjustly dismissed on April 9, 1979.

2. Claimant E. J. Flores shall be reinstated to his  
former position with pay for all time lost, seniority,  
vacation and all other rights unimpaired.

Findings: The Board, after hearing upon the whole record and 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 was advised by his Division Engineer under date of  
April 9, 1979:

"On April 9, 1979 you were instructed by the Foreman  
and the Roadmaster to get on the welder's truck to  
be transported to the job site because the regular  
gang truck was bad ordered. You did not follow the  
Foreman or Roadmaster's instructions. This is in  
violation of Rule 801 of the general rules and regulations  
of the Southern Pacific Transportation Company, ....

Rule 801:

'Employees 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..."

Claimant requested and was granted a hearing which was held  
May 15, 1979. Thereafter, Claimant was advised:

"I have reviewed the transcript of the hearing which  
was given to you on May 15, 1979 and find that by your

own admission, you were insubordinate as charged;  
therefore, your dismissal will stand."

The Board finds that Claimant was accorded due process.

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

However, as to the discipline assessed the Board finds that it was so disparate as to represent an abuse of Carrier's discretion. There were other employees who had also refused to ride on the truck. Claimant was sent home and dismissed from service while the other two employees were also sent home but were only suspended. Thereafter, the remaining employees were transported to the job in another truck.

In the circumstances, the Board concludes that while Carrier proved that Claimant, who was one of three who were insubordinate, had been insubordinate it treated Claimant differently than the other two employees who similarly refused. While we recognize that insubordination is a serious offense there appears to be basis for questioning whether it was appropriate for these three employees, as well as the rest of the gang to ride in the rear of the truck. Notwithstanding, the remaining gang member did.

The Board will reduce the discipline assessed to 30 days suspension. Claimant shall be paid the difference in earnings lost predicated on the basis of his work habit for the year preceding the period of dismissal less the usual and customary deductions.

Award: Claim disposed of as per findings.

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

  
M. A. Christie, Employee Member

  
C. B. Goyne, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Falmouth, Massachusetts, August 15, 1980.