

Award No. 27

Case No. 36

Docket No. 79-145

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 Wardell Taylor was unjustly dismissed in letter dated September 13, 1979.

2. Claimant Taylor shall now be paid for all time lost beginning September 10, 1979, and continuous until he was reinstated on October 22, 1979; and that the charges as outlined in the dismissal letter dated September 13, 1979, be removed from Mr. Taylor's 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.

Claimant, received the following letter from the Regional Manager Maintenance of Way dated September 13, 1979:

"You are instructed by your foreman to be present for duty on September 8 and 9, 1979, and you failed to protect your assignment on these dates. Failure to follow the instructions of your supervisor is a violation of Rule 801. Failure to protect your assignment is in violation of Rule M810.

For your violation of these rules, you are dismissed from the service of the Southern Pacific Transportation Company...."

Thereafter, as requested, an investigation was held on October 11, 1979. Claimant was advised under date of October 18, 1979 that he would be returned to work on a leniency basis without pay for lost time. General Chairman Vanya refused to accept that decision. He requested pay for the time lost by Claimant beginning September 10, 1979 until he was reinstated on October 22, 1979.

The Operating Rules cited, in part pertinent, read:

"801. Employees will not be retained in the service who are...insubordinate...

810. Employees must report for duty at the prescribed time and place, remain at their post of duty, devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority..." .

A thorough review of the transcript indicates that that which appeared to be insubordination might very well have been a common misunderstanding of whether an instruction or simply advice was being given. Such arose because of the unclear or improper communication of the instructions by Claimant's Supervisor to work overtime. On the basis that Carrier will advise its Supervisors to make clear its instructions to the employees that when they are required to work overtime they are to so state and to not leave any doubt that the service of employee(s) involved are needed and that the matter is not optional. In such circumstances the discipline will be reduced to a twenty (20) day suspension and Claimant will be allowed pay for the time lost accordingly.

Award Claim disposed of as per findings.
Order Carrier is directed to make this Award effective, within
 thirty (30) days of date of issuance shown below.

M.A. Christie
M.A. Christie, Employee Member

C.B. Goynes
C. B. Goynes, Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Wilmington, Delaware, April 16, 1981.