

PUBLIC LAW BOARD NO. 2444

Award No. 36

Case No. 49

Docket No. MW 80-102

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 System Laborer D. W. Nixon was unjustly dismissed by letter dated April 16, 1980.

2. Claimant Nixon shall now 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, a system laborer first went to work on the Lufkin District on March 25, 1980.

He was advised under date of April 16, 1980 as follows:

"You have been absent from your job assignment without proper authority from April 8, 1980 to date, which is in violation of Rule M810 of the General Rules and Regulations of the Southern Pacific Transportation Co. as posted by General Notice. Rule M810 reads in part as follows:

Rule M810:

"The employees must report for duty at the prescribed time and place...They must not absent themselves from their employment without proper authority... Continued failure by employees to protect their employment

shall be sufficient cause for dismissal..."

For your violation of Rule M810 you are dismissed from the service of the Southern Pacific Transportation Company..."

Claimant requested a hearing. Request was granted and a hearing was set for May 8, 1980. It was held as scheduled but Claimant failed to attend said investigation. However, he was capably represented thereat by his General Chairman.

As a result thereof, he was advised on May 13, 1980, that:

"Testimony taken at a hearing held on your behalf May 8, 1980 reveal you were in violation of Rule M810 as charged; therefore, your dismissal will stand."

The Board finds that Claimant was first employed March 7, 1978, i.e. two years and a month to the time of dismissal.

The Board finds that Claimant was accorded the due process to which entitled under Article XIV, Discipline Investigation Rule.

There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability. Claimant was working under the supervision of District Maintenance of Way Manager J. A. Flories for some 2½ months, he had been aware of the requirement to obtain permission to be absent. Claimant was absent for the period April 8th through the 16th. On April 9th he contacted his supervisor and was to come in the following day. Claimant failed to show up. He alleged that he had car trouble.

The record reflects that between March 25, 1980, when Claimant first went to work on the Lufkin District until the date of his dismissal he was absent nine working days and reported late three hours on one day.

The Board finds in the circumstances the discipline is reasonable.

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

Issued at Falmouth, Massachusetts, June 10, 1982.