

PUBLIC LAW BOARD NO. 2444

Award No. 4

Case No. 5

Docket No. MW-78-115

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute: Southern Pacific Transportation Company
(Texas and Louisiana Lines)

Statement of 1. Carrier violated the effective Agreement when Houston Division
Laborer C. E. Daniels was unjustly dismissed June 16, 1978.

Claim: 2. Claimant C. E. Daniels 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's Division Engineer, under date of June 16, 1978 sent him
the following letter reading:

"You were absent from your job without proper authority on June 15,
1978 when your Foreman instructed you to go to Hardy Street to
assist in repairing tracks at scene of derailment, and you did
not report as instructed. On June 16, 1978 you were absent without
authority at the job site.

This is in violation of Rules 801 and 810 of the General rules and
regulations of the Southern Pacific Transportation Company, as
posted by General Notice, effective October 31, 1976, which reads
in part as follows:

Rule 801

'Employees will not be retained in the service who are
insubordinate'

Rule 810

'Employees must report for duty at the prescribed time and
place, remain at their post of dutyduring their tour

of duty. 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....'

You are dismissed from the service of the Southern Pacific Transportation Company for your violation of Rules 801 and 810 and are instructed to return any Company property that you have in your possession to Roadmaster J. W. Duke at 1315 Semmes Street, Houston, Texas."

Claimant requested and was granted a hearing which was held July 18, 1978. As a result thereof the Division Engineer on July 24, 1978, advised Claimant:

"Testimony taken on your hearing on July 18, 1978 supports the charges that you were absent without authority on June 15 and June 16, 1978, and that you were insubordinate on June 15 when you failed to follow the foreman's instructions.

You can be forgiven for your failure to call in to the roadmaster's office after your accident, although you were able to do so according to your testimony.

Your leaving the job when the foreman had instructed you to work at the derailment on June 15, 1978 cannot be tolerated; therefor, your dismissal will stand."

The Board finds that Claimant received the due process assured him under his discipline rule.

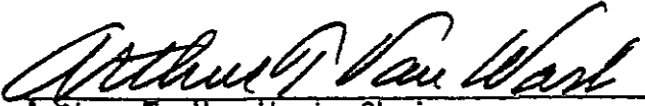
There was sufficient evidence to support the conclusions reached by the Carrier. The discipline assessed was not unreasonable.

However, there were circumstances present which served to mitigate the discipline. Claimant will be restored to service with all rights unimpaired but without any pay for the time out of service, subject, of course, to passing the necessary physical examination.

AWARD: Claim disposed of as per findings.


M. A. Christie, Employee Member


C. B. Goyne, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

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

Issued at Salem, New Jersey, February 7, 1980.