

PUBLIC LAW BOARD NO. 2444

Award No. 42

Case No. 55

Docket No. MW 80-147

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Southern Pacific Transportation Company
(Texas and Louisiana Lines)

Statement 1. Carrier violated the effective Agreement when Foreman
of L. S. Portillo was unjustly dismissed from service by letter
Claim dated April 8, 1980.

2. Claimant Portillo shall now be reinstated to his former
position with pay for all time lost, vacation, seniority and
all other rights unimpaired; and that his record be cleared
of this charge.

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 foreman of Extra Gang 334 had been employed by Carrier
for almost eight years. He was advised under date of April 8, 1980 as
follows:

"During the year 1978 you obtained cash money, and
oil products and services for your personal use by use
of Exxon and Texaco credit cards issued to Southern
Pacific Transportation Company. Such action occurred
between San Antonio and El Paso, Texas. Use of these
credit cards for your personal gain was dishonest.

Your actions in connection with this activity are in
violation of that portion of Rule 801 of the Rules and
Regulations of the Maintenance of Way and Structures

reading as follows:

'801. Employees will not be retained in the service who are dishonest..

Any act of...misconduct...affecting the interest of the company is sufficient cause for dismissal..."

For the reasons stated above you are hereby dismissed from the service of the Southern Pacific Transportation Company.."

Despite the aggressive and innovative defense presented by the Employee Representative there was sufficient evidence adduced to support Carrier's conclusion as to Claimant Foreman's culpability.


The Board finds no ground for disturbing the discipline assessed. Claimant had a fair and impartial hearing, he was capably represented, he had an opportunity to produce any witnesses that he desired. The Special Agent's testimony withstood the test of cross-examination and Claimant exercised his right of appeal.


The Board does not substitute its judgment for that of the hearing officer as to the credibility of witnesses, the weight of evidence or conflict in such evidence. We do determine however that Carrier did not act so as to be considered arbitrary or capricious in its findings against Claimant. Nor can we find based on this record that Carrier acted unfairly or arbitrarily against the right of Claimant.

In the circumstances the discipline is found to be reasonable. This Claim will be denied.

AWARD: Claim denied.


M. A. Christie, Employee Member


C. B. Goyne, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member