

PUBLIC LAW BOARD NO. 2444

Award No. 48

Case No. 61

Docket No. MW 81-15

MW 80-113

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 Track Laborer E. M. Roberts was unjustly dismissed September 19, 1980.

2. Claimant Roberts shall now be reinstated to his former position with all seniority, vacation rights, and all other rights unimpaired, in addition to all compensation lost commencing September 19, 1980 and to run concurrently until such time that he is returned to service.

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 track laborer, was advised under date of September 19, 1980 as follows:

"You are dismissed from the service of the Southern Pacific Transportation Company for absenting yourself from employment at 12:00 noon on September 18, 1980 without proper authority, which is in violation of that portion of Rule M810 of the General Rules and Regulations of General Notice effective April 1, 1978, Southern Pacific Transportation Company which reads in part as follows:

'Rule M810. Employees must report for duty at the prescribed time and place....They must not absent themselves from their

employment without proper authority..."

Claimant requested and was granted a hearing which was held November 19, 1980. As a result thereof Claimant was advised that the discipline of dismissal was upheld.

There was sufficient evidence adduced, including the admissions of Claimant, to support the conclusions reached by Carrier as to Claimant's culpability. Carrier as the trier of the facts resolved the conflicts with testimony and determined the credibility of the witnesses. We find no abuse of that discretionary right. Claimant, on September 18, 1980 was on loan from Extra Gang 139 at Beaumont to assist Extra Gang 130 replace ties at a derailment site near the vicinity of MP20 on the Port Arthur Branch. Claimant left the job at 12:00 noon on September 18 and did not return. Claimant admitted that he did not ask permission to be off and that he knew how to obtain proper permission to be absent.

Claimant alleged that he felt dizzy, that he was about to pass out and that he left the property because he felt that his condition would impair his safety as well as the safety of his co-workers if he attempted to work.

However, the record reflects that Claimant instead of going to the emergency room when he left, he made an appointment with a Dr. Mendoza for September 25, 1980, some eight days later. At which time, according to Claimant, he was advised that he had a slight hernia. Claimant returned to the job the next day on September 19, 1980.

Absent either a compelling reason for leaving the job or authority being given therefor the walking off of an assignment would represent at best a careless and callous attitude and at worse a total disregard for

responsibility for ones obligation to his employer and his fellow employees.

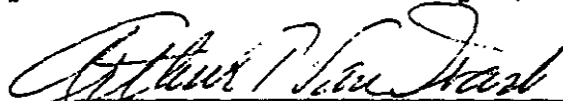
When, as here, the guilt of an offense has been established it is proper for the Carrier to consider Claimant's past disciplinary record in assessing the amount of discipline to be assigned for the offense just proven. Claimant's record reflects that he has a marked propensity for violation of Rule M810. In fact he was dismissed on December 1, 1977 for violation thereof. Claimant was later reinstated on a leniency basis. Several months thereafter he was assessed sixty demerits for violation of Rule M801.

The Board finds that the discipline in light of the offense and Claimant's personal record is reasonable. In the circumstances 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

Issued at Falmouth, Massachusetts, June 10, 1982.