

PUBLIC LAW BOARD NO. 2444

Award No. 49

Case No. 62

Docket No. MW 81-17

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 Machine Operator Spurgeon Centers was unjustly dismissed on November 5, 1980.

2. Claimant Centers shall now be reinstated to his former position with pay for all time lost, vacation, seniority and all other rights unimpaired due to his being unjustly dismissed; and that this charge be stricken from his 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, a Machine Operator, was advised under date of November 5, 1980, that he had been dismissed from service because:

"On October 31, 1980 you performed service for the Southern Pacific Transportation Company from 7:00 a.m. to 12:00 noon for a total of five hours. You made the timeroll for that day indicating you had worked eight hours. Falsification of timeroll is in violation of Rule 801 of the General Rules and Regulations of the Southern Pacific Transportation Co..."

Claimant asked for and was granted a hearing which was held on

December 16, 1980. As a result thereof he was advised that the original decision was upheld.

Rule 801 reads:

"Employees will not be retained in the service who are ... dishonest,..."

The Board finds that Claimant was accorded the due process to which entitled under his discipline rule.

There was sufficient evidence adduced to support the conclusion reached by Carrier as to Claimant's guilt. Claimant alleged that he had permission to be off from his Foreman but this was unsubstantiated in the transcript. Irrespective thereof, Claimant further alleged that he came back at 2:40 PM and that he hung around the office for twenty minutes. This allegation also remained unsupported.

In view of mitigating circumstances, Claimant shall be reinstated to service with all rights unimpaired but without any monies for time out of service, subject to the following: Claimant will be placed in a probationary status for a one (1) year period; he must pass the necessary return to service examinations and both Claimant and his Local Chairman shall meet with Carrier's local representative designated for such purpose, to review Claimant's service record and the conditions of his reinstatement so that he may properly understand same. Claimant has been afforded his last chance opportunity to demonstrate that he wants to work for the Carrier.

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, Employee Member

C. B. Goyne, Carrier Member

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