

PUBLIC LAW BOARD NO. 2444

Award No. 52

Case No. 66

Docket No. MW-81-14  
300-3-A

Parties Brotherhood of Maintenance of Way Employes

to and

Dispute Southern Pacific Transportation Company  
(Texas and Louisiana Lines)

Statement Claim of BMWE and Track Laborer Joseph Owens for reinstatement of to his former position with all seniority, vacation rights, Claim and any other rights accruing to him unimpaired, in addition to all compensation lost commencing September 15, 1980 to run concurrently until he is restored 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 on extra gang 141, was advised under date of September 17, 1980, as follows:

"You are dismissed from the services of the Southern Pacific Transportation Company for being absent from your employment as Lafayette Division Track Laborer without authority on September 13, 1980, which is in violation of that portion of Rule M810 of General Rules and Regulations of General Notice effective April 1, 1978 of Southern Pacific Transportation Company, which reads as follows:

'Rule M810. Employes must report for duty at the prescribed time and place, remain at their post of duty and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority...."

Claimant requested and was granted a hearing, which was held on November 18, 1980. As a result thereof he was advised that the dismissal was sustained.

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

There was sufficient evidence adduced to support the Carrier's conclusion as to Claimant's culpability.

The Board finds that there are mitigating circumstances which serve to permit a modification of the discipline assessed. Consequently, we will reinstate Claimant to service with all rights unimpaired, but without pay for time out of service and Claimant will be placed in a probationary status for a six month period. If Claimant, after notification of these conditions, has not advised Carrier and the Organization of his acceptance the claim will be denied at such time.

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, Chairman  
and Neutral Member

Issued at Wilmington, Delaware, May 29, 1982.