

PUBLIC LAW BOARD NO. 2444

Award No. 57

Case No. 71

Docket No. MW-81-92

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company
(Texas and Louisiana Lines)

Statement of Claim Claim of BMWE and Houston Division Machine Operator David Gibson for an arbitrary and penalty payment of 8 hours at his respective straight time rate of pay, alleging not being allowed to work his regular tour of duty and him not being advised as to why.

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.

The Maintenance of Way Local Representative, under date of April 24, 1981 wrote the Regional Manager as follows:

"We are presenting to you a claim on behalf of David Gibson, Houston Division Machine Operator, for 8 hours at his straight-time rate of pay account of not being allowed to work his regular tour of duty. On Friday, March 27, 1981 Mr. Gibson reported that a district MofW Manager B. L. Rinehart's Office at 5820 Wallisville Road to receive his daily line-up, at which time district MofW, Manager, B. L. Rinehart sent him home account of having tennis shoes on. Mr. Gibson, however, wears this type shoe while driving to work, then puts on his regular work boot when he arrives at the job site. Also Mr. Gibson has not, at this time, been advised in writing for this discipline as provided under Article 14 of the current agreement between the Southern Pacific Transportation Company and the Brotherhood of Maintenance of Way Employees. We are now asking that Mr. Gibson be paid 8 hours at the straight time rate of pay in addition to any and all other pay he may have already seeked due to this violation."

The Regional MofW Manager replied on May 6, 1981 as follows:

"Investigation reveals that Mr. Gibson was in violation of Rule "J" of the "Rules and Regulations of the Maintenance of Way Structures" for not wearing proper footwear after being told the previous day he would not be allowed to work without safety shoes.

Since Mr. Gibson was told he would not be allowed to work unless he wore safety shoes, and he chose not to follow District MofW Manager's orders, the claim as presented is without basis and is denied."

Said Rule "J" reads:

"Employees reporting for duty must be neat and clean in appearance, suitably clothed and wear their hair in a manner to permit safe performance of their duties.

Prescribed uniforms, protective clothing and equipment, must be worn while on duty.

Employees must wear shoes that afford maximum support and protection to their feet when performing repair work between, upon, in or under engines, freight or passenger cars; while performing repair work on or about track or structures; and while on duty in train, engine or yard service.

Open-toed shoes, canvas shoes and lounging shoes are unsuitable for these types of work and are prohibited. High-top shoes giving added support to the ankles; low heels afford firmer footing and make standing and walking safer."

This claim was appealed to the highest designated officer who handle such claims who advise as follows:

"Regional MofW Managers investigation reveals that Mr. Gibson was told the previous day that tennis shoes were not proper footwear and was told by District Manager Ryan Hart that he was in violation of Rule "J" and would not be allowed to work without proper shoes. On Friday, March 27, 1981, Mr. Gibson arrived at the job site after the starting time of the gang, again without proper footwear. Since Mr. Gibson chose not to follow district MofW Manager's instructions and again wore tennis shoes to work, he was held not allowed to report for duty.

Therefor, your claim as presented is without basis and respectively declined."

The General Chairman responded thereto and stated:

"You were advised during the conference that Mr. Gibson was not at the job site with tennis shoes on, he reported to the District Manager's Officer before work time and was denied work. It is our position that when an employee is denied work of his regular assigned position he is disciplined and Mr. Gibson was not advised in writing as outlined in Article 14 (a).

It is our position that this is a just claim and will be handled as such."

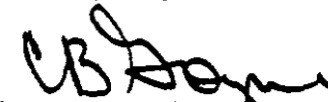
The Board finds that there is a conflict in fact necessary to a proper resolution of the instant dispute. If, as is alleged by Carrier, that Claimant had reported after the starting time of the gang after being forewarned then he was in violation of Rule "J" then Carrier acted appropriately. Such action is not construed to be discipline. On the other hand, if the facts are as asserted by the Employees, to wit - that Claimant was at the District Manager's Office before work time and that he changes his shoes at the job site and does not work wearing tennis shoes, then the Employees are right.


The Board on the state of this record can not resolve the conflict of facts therefore it will be returned to the parties for disposition on the above basis.

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