

PUBLIC LAW BOARD NO. 2444

Award No. 61

Case No. 75

Docket No. MW-81-132

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company
(Texas and Louisiana Lines)

Statement

of Claim: Claim of BMW and George L. Holiday for reinstatement to his former position with pay for all time lost, seniority, vacation and all other rights unimpaired, alleging unjustly dismissed:

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 Laborer-Driver, had been working on an Extra Gang No. 64 and had been employed since August 14, 1978. He was notified under date of April 7, 1981 by the Regional Maintenance of Way Manager as follows:

"At approximately 11:30 p.m., March 30, 1981 you entered a company trailer at Millican, Texas and attacked Laborer R. L. McKinley with a chain, causing bodily harm which resulted in Mr. McKinley being treated by a doctor. This is in violation of Rule 801 of the General Rules and Regulations of the Southern Pacific Transportation Company as posted by General Notice. Rule 801 reads in part as follows:

RULE 801:

'Employees will not be retained in the service who are...vicious, or who conduct themselves in a manner which would subject the railroad to criticism.

Any act of hostility, misconduct...
effecting the interest of the company
is sufficient cause for dismissal...'

For your violation of Rule 801, you are
dismissed from the service of the Southern
Pacific Transportation Company..."

Claimant requested an investigation which was granted and held on May 12, 1981. As a result thereof, Claimant was advised that the decision of dismissal was being upheld.

While there was conflicting testimony Carrier chose to believe the testimony of witness Foreman Wyatt who had testified in part:

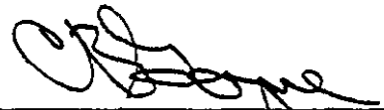
"We were laying in bed asleep and Curtis Bazile came in the trailer at 11:30 p.m. and cut the light on. When he cut the light on and walked to the refrigerator, George Holiday came in with a chain. R. E. McKinley was asleep and Holiday start hitting McKinley with a chain. George Holiday ran out of the trailer. I went to the phone booth to call the dispatcher to get the law out there. By that time I heard gun shots. When I came back, R. E. McKinley was walking around the trailer with his gun. Thats it."


Claimant admitted that he entered Mr. McKinley's trailer house uninvited about 11:30 PM. He also admitted that he did strike Mr. R. E. McKinley with a chain, resulting in Mr. McKinley being treated by a medical doctor. Consequently, the only issue is whether or not Carrier was arbitrary or capricious in assessing the discipline of dismissal in the case. We find not. The record is clear that Claimant had committed a very serious deed in assaulting and committing a battery on a fellow employee. Carrier cannot and should not either permit or tolerate such conduct.

Here, Claimant had been accorded the due process to which entitled. There was sufficient evidence adduced, including Claimant's admissions, to support Carrier's conclusions of his guilt. The discipline of dismissal in the circumstances prevailing 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

Issued May 11, 1983.