

PUBLIC LAW BOARD NO. 2444

Award No. 62

Case No. 76

Docket No. MW-81-133

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 Machine Operator J. R. Olivier for an arbitrary and penalty payment of 40 hours pay at Machine Operator's respective pro rata rate in addition to 6 hours pay lost while attending the scheduled hearing on June 25, 1981, alleging unjustly suspended for five working days:

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 who had been employed by Carrier for just over 8 years, was notified by the Regional Maintenance of Way Manager, W. H. Bristow under date of June 8, 1981, in part, as follows:

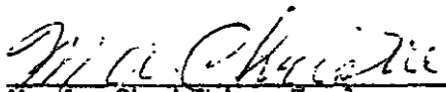
"You are suspended from the service of Southern Pacific Transportation Company for five (5) working days without pay from June 8 through and including June 12, 1981 for being absent from your job assignment without proper authority on June 5, 1981 which is in violation of Rule M810..."

Claimant requested and was granted a hearing which was held on June 25, 1981. Carrier concluded therefrom that Claimant was guilty as charged and he was so advised.

Here, Carrier chose to accept as more credible the testimony of its witness in chief, Claimant's foreman, who testified that on June 5 it

was raining, that there was work to be performed which was of an emergency nature, and that Claimant who lived in the trailer had advised him that "I am not coming to work today." That Claimant was not the only one who did not work on June 5th because there were 18 others, most of whom lived in Houston, does not serve as a valid defense. The error or omission of one employee does not exculpate that of another. Each has a responsibility to comply. Progressive discipline was applied to Claimant as well as to the others. Here, it was shown that the incident was Claimant's third. The Board finds that in the circumstances the discipline assessed was 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.