

PUBLIC LAW BOARD NO. 2444

Award No. 67

Case No. 81

Docket No. MW-81-142

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company
(Texas and Louisiana Lines)

Statement

of Claim: Claim of BMW Track Laborer C. C. Shelly for 80 hours at his respective straight time rate of pay and his record cleared for all charges, allegedly unjustly suspended from service April 16, 1981 through April 29, 1981.

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.

Maintenance of Way Manager O. J. Orphan, on June 24, 1981, advised Claimant as follows:

"On April 15, 1981 you were dishonest to your District Manager R. A. Gohmart when you stated that you never saw or were presented a letter instructing you to report to your regular job assignment effective April 15, 1981. Investigation revealed Foreman Caldwell had presented you this letter April 14, 1981, but you refused to sign same. You failed to report for duty at your regular job assignment at your regular working hours, without receiving proper authority, on April 15, 1981. Being dishonest is in violation of Rule 801 and failure to report to your job assignment without receiving proper authority is in violation of Rule M810 of the General Rules and Regulations of the Southern Pacific Transportation Company...

For your violation of Rules 810 and 801 you are suspended from service of the Southern Pacific Transportation Company without pay from April 16, 1981 through April 29, 1981..."

Here, the record reflected that Claimant had asked District Manager Gohmart for authority to work on a different but particular work gang, i.e., Extra Gang 202, in order to allow Claimant to continue his education at school. Such permission was granted on the basis that Claimant could work on said Gang 202 until he finished his education.

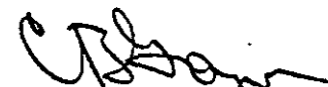
The Board finds that the personal arrangement made by these two individuals was contrary to the applicable Schedule Agreement and had been made without participation of the Organization therein. Such unauthorized arrangement undoubtedly blinded Claimant's common sense.


The procedural error created by the absence of the foreman who was in attendance but who was permitted to leave the investigation without request or agreement or participation by the Organization therein, causes the Board to modify the discipline to five (5) days suspension.

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 May 11, 1983.