

Award No. 75

Case No. 89

Docket No. MW-81-173
327-17-A

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute Southern Pacific Transportation Company
(Texas and Louisiana Lines)

Statement

of Claim: We are appealing to you a claim in behalf of Machine Operator F. G. Washington of Extra Gang #141 for 80 hours pay at his respective machine operators pro rata rate in addition to 8 hours pay for time lost while attending the hearing, and 10 days trader pay allowance (\$3.67 per day) lost due to his unjust suspension from service on June 17, 1981, and also having his personal record cleared of the alleged charges.

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 was advised under date of June 17, 1981 as follows:

"On June 16, 1981 at approximately 10:30 a.m. you were insubordinate when you refused to follow General Track Foreman F. L. Weishaar's instructions when he asked you to put oil in your assigned machine when it was determined the machine was without oil, and begin working. This is in violation of Rule 801 and 802 of the General Rules and Regulations of the General Notice of the Southern Pacific Transportation Company effective April 1, 1978...

For your violation of Rules 801 and 802, you are suspended from the service of the Southern Pacific Transportation Company (working days

without pay effective June 17, 1981 through and including June 30, 1981)."

At the requested formal hearing Claimant was advised on September 1, 1981 that the discipline as assessed was sustained.

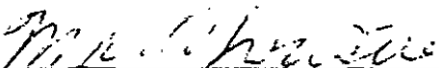
The Board finds that Claimant was accorded a fair and impartial hearing as contemplated by his discipline rule.


The Board finds that there was sufficient evidence adduced to support Carrier's conclusion that technically Claimant had been insubordinate. He refused to put in oil which, in Claimant's opinion, might have caused damage to the machine.

The Board finds that Claimant's act of insubordination was not willful or malicious. It was intentioned as the Operator of the vehicle and such fact of his interest in his machine should have been taken into consideration in assessing the discipline. We find the discipline to be excessive and it is reduced to five (5) days.

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 March 14, 1983.