

PUBLIC LAW BOARD NO. 2444

Award No. 84

Case No. 98

Docket No. MW-82-10
-334-44-A

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company
(Texas and Louisiana Lines)

Statement

of Claim: Claim of BMWE Machine Operator Joseph Edwards for reinstatement to his former position with all seniority, vacation rights, his work record cleared of the alleged charge and any other rights accruing to him unimpaired, in addition to all pay lost commencing September 14, 1981 and to run concurrently until such time as he is restored to service:

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 Regional Maintenance of Way Manager, under date of September 16, 1981, notified Claimant as follows:

"You are dismissed from the service of Southern Pacific Transportation Company for falsifying your semi-monthly timeroll on August 3, 1981. This is in violation of Rule 801 of the General Rules and Regulations of the General Notice effective April 1, 1978 of the Southern Pacific Transportation Company which reads in part as follows:

'Rule 801. The employees will not be retained in service who are...dishonest.'"

Claimant requested and was granted an investigation which was ultimately held on October 27, 1981. As a result thereof, Claimant was advised that the dismissal was sustained.

Here, the employees allege that an honest mistake had been made, that he had called his wife by telephone having left his time book at home and that he copied that which she gave him. However, the District Manager testified to the contrary. He asserted that Claimant initially had told him that he (District Manager) was in error and Claimant brought out a book showing where he had worked. The District Manager then told Claimant that he had not worked on that date. The Claimant, later told the District Manager that he had worked on the Schriever District, that this was overtime, that he was short and that he had contacted his office to get authority to show same on the time payroll. Thereafter, Claimant later told said Manager that he had just made an honest mistake and that he did not work on that date. Claimant later told the District Manager that his wife had made out the timeroll and that he did not work that day but that she had shown it on the timeroll.

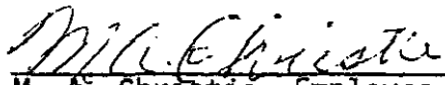
Carrier chose to here believe the testimony of its witness. The record does not support any abuse of this discretionary right. As was noted in Second Division Award No. 7817 (Marks) involving a falsification of time slips:

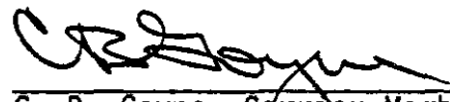
"Claim for pay for time not worked and not otherwise compensable is a serious matter, going to the heart of the employment relationship. If the claim for pay was simply a mistake, the employee making the error must be prepared to offer proof and logical reasons for the error; otherwise, any false claim upon its discovery, could be defended by claiming 'mistake.' The Board finds no such convincing proof nor unusual circumstances in this case. The Claimant's defense is not enhanced, in addition, by the unclear account of events of the day as referred to herein. Claimant's particular position of working from day to day without direct supervision enhances his responsibility for accurate time reporting."

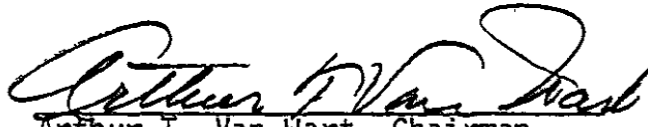
Claimant's service record indicates eight offenses for which he had been suspended twice and that he had been previously dismissed for an unrelated offense.

The Board in the circumstances, finds that Claimant was accorded the due process to which entitled, that there was sufficient evidence adduced to support the conclusion reached by Carrier and that the discipline assessed was not unreasonable.

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.