

PUBLIC LAW BOARD NO. 2444

Award No. 85

Case No. 99

Docket No. MW-82-22
-336-18-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 and Track Laborer P. D. Celestine, Extra Gang 103, for reinstatement to his former position with all seniority, vacation rights and any other rights accruing to him unimpaired, in addition to all compensation lost commencing December 10, 1981 and to run concurrently until such time as Track Laborer D. Celestine is restored to service with his work record cleared of the alleged charges, 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 assigned to Extra Gang 103, Lafayette Division, was advised by the Regional Maintenance of Way Manager on December 10, 1981 as follows:

"On December 9, 1981, while working in Jeanerette, at approximately 8:00 AM, Foreman C. J. Soularie allowed you to go to Shirley's Grocery and Liquor Store to purchase a pack of cigarettes, at which time you purchased and drank a beer while in the store, then, thereafter walked out to the sidewalk in front of the store and urinated on the sidewalk which was witnessed by Ms. Shirley Landry, owner of Shirley's Grocery and Liquor Store. This is in violation of Rules G and 801

of the General Notice of the General Rules and Regulations of the Southern Pacific Transportation Company effective April 1, 1978 which read in part as follows:

'Rule G. The use of alcohol beverages,... or being under the influence thereof while on duty or on company property is prohibited...'

'Rule 801. Employees will not be retained in the service who are...immoral, or who conduct themselves in a manner which would subject the railroad to criticism...'

For your violation of Rules G and 801, you are dismissed from the services of Southern Pacific Transportation Company effective December 9, 1981..."

Claimant requested and was granted a hearing which ultimately was held on January 6, 1982.

The letter of dismissal dated December 10, 1981 was corrected by a letter of December 31, 1981, in part, reading:

"This letter corrects our letter dated December 10, 1981. On December 9, 1981, while working in Jeanerette, at approximately 8:00 AM, Foreman C. J. Soularie allowed you to go to Shirley's Grocery and Liquor Store to purchase a pack of cigarettes at which time you purchased a beer. You later returned at approximately 11:45 A.M. and bought one half pint of rum, and then, thereafter walked out to the sidewalk in front of the store and urinated on the sidewalk in front of the store which was witnessed by Ms. Shirley Landry, owner of Shirley's Grocery and Liquor Store..."

Following the hearing, Claimant was advised that the dismissal was sustained. The complainant did not appear at the investigation. She gave a statement to a Special Agent which was entered and appeared in line with the letters of December 9 and 31, 1981.

The Organization contested the testimony as being hearsay. It produced several employee witnesses who testified contra.

Carrier also introduced a Production Supervisor who had investigated the incident that day, had talked with the complainant and based on her description went to the Gang that Claimant was working in and testified that he smelled an odor of alcohol on Claimant.


Carrier's next witness was the District Manager who had investigated the incident and who had talked with Claimant. He brought Claimant to the store where the complainant Ms. Shirley Landry identified Claimant as being the individual against whom she had originally filed a complaint. Thereafter, the District Manager removed Claimant from service.

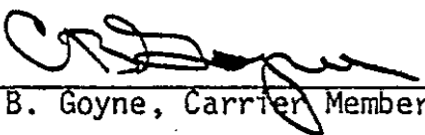
The Board finds that there was sufficient evidence adduced to support the conclusion reached by Carrier.


Claimant's service record was taken into consideration in the assessment of discipline. It reflected that on May 15th Claimant had been assessed 30 demerits for violation of Rule 810 (being absent without authority on November 3, 1978). Claimant was dismissed for violation of Rule 801 (being insubordinate or quarrelsome). After Claimant's reinstatement he was assessed 30 demerits on November 17, 1978 for violation of Rule 810 for reporting late to work. On February 1, 1979 Claimant was dismissed again for violation of Rule 810 being absent without authority. He was again reinstated. Claimant, of course, again was dismissed for the incidents under review in the instant case.

The Board 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 in the circumstances herein was reasonable. This claim will be denied.

Award: Claim denied.


M. A. Christie, Employee Member


C. B. Goynes, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member