

PUBLIC LAW BOARD NO. 2444

Award No. 93

Case No. 106

Docket No. MW-82-177

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 Bridge Tender Leonard L. Blackwell 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 11:30 a.m., June 17, 1982, and to run concurrently until it is restored to service 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 Bridge Tender had been employed almost three years. He was advised by the System Regional Engineer, under date of June 18, 1982, as follows:

"On June 17, 1982 at approximately 11:30 A.M. District MofW Manager J. D. Leger discovered you sleeping in the Bridge Tender's shanty near the Calcasieu River Bridge while on duty. This is in violation of Rule M810 of the General Notice of the General Rules and Regulations effective April 1, 1978 which reads in part as follows:

'Rule M810. Employees must not sleep while on duty. Lying down or assuming a reclining position, with eyes closed or eyes covered or concealed, will be considered sleeping...'

For your violation of Rule M810 you are dismissed from the service of the Southern Pacific Transportation Company effective at end of tour of duty June 18, 1982."

Request for a hearing thereon was made and granted but the scheduled hearing was postponed.

A rescheduled formal hearing was held August 5, 1982. Claimant failed to appear thereat. It was held in absentia. Claimant was advised thereafter that the evidence developed at the hearing supported Carrier's conclusion of guilt and that the discipline assessed was sustained.

The Board finds that Claimant was accorded the due process to which entitled under his rule. The fact that he was not present does not act as a nullity of the proceedings held. Claimant had been advised under certified letter. He was aware thereof, as evidenced by the certified mail's Return Receipt, Postal Form 3811. Such absence, on these facts, presumes a waiver of his right to attend but Claimant is bound by the record developed at the hearing. His deliberate failure of attendance authorized Carrier to proceed in absentia. In this connection, see, among others, Third Division Awards No. 4066, 4433 and 9327.

There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's guilt of the charges placed against him. Claimant was observed by the District Manager sleeping in a chair with his feet on another chair and his boots off.

Claimant held a responsible position. His duties required him to open and close the drawbridge for river traffic, to record boat and train movements. Such responsibilities therefore were to be in compliance with Carrier's regulations as well as the United States Coast Guard. Further, to see that no unauthorized personnel was on or located near the bridge under his jurisdiction. The District Manager also observed a man fishing off the bridge.

Sleeping on duty, under the circumstances present, is a serious offense so as to permit the conclusion that the discipline of dismissal assessed was not arbitrary or capricious.

Award: Claim denied.


M. A. Christie, Employee Member


C. B. Goyne, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued October 21, 1983.