

PUBLIC LAW BOARD NO. 2556

Award No. 3

Case No. 3
File MW-186

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute: Southern Railway Company

Statement of Claim: Claim on behalf of J. Sanders for restoration to service with all rights unimpaired and pay for time lost subsequent to September 11, 1978 account of being dismissed for striking Foreman J. Miller.

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 October 17, 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 Track Laborer was dismissed for conduct unbecoming an employee following a formal investigation held on September 5, 1979 in connection therewith. It was demonstrated therein that Claimant had struck Track Foreman, Jesse Miller, with a pick following a discussion concerning the proper use of track tools at Birmingham, Alabama on August 21, 1978.

The Board finds that Claimant was given a proper and fair hearing.

The evidence adduced at the investigation supports Carrier's conclusion as to Claimant's culpability, including the statement by Claimant that he did in fact strike Foreman Miller with a pick. In light of the fact that there was no basis or provocation therefor, we too conclude that Claimant was the aggressor and that Carrier's conclusion was consistent with the record.

In the circumstances, we find that the discipline assessed was not unreasonable. This claim will be denied.

Award: Claim denied.

A. D. Arnett

A. D. Arnett, Employee Member

R. S. Spenski

R. S. Spenski, Carrier Member

Arthur T. Van Wart

Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, this 5th day of April, 1980.