

PUBLIC LAW BOARD NO. 4373

PARTIES	SOUTHERN PACIFIC TRANSPORTATION COMPANY)	
	(EASTERN LINES))	
TO	AND)	AWARD NO. 26
DISPUTE	BROTHERHOOD OF MAINTENANCE OF WAY)	CASE NO. 32
	EMPLOYEES)	

STATEMENT OF CLAIM:

1. The Carrier's decision to dismiss Track Laborer A. Morin from service for alleged violation of Rules 604 and 607 was arbitrary, on the basis of unproven charges and an abuse of the Carrier's discretion.
2. The Claimant shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered commencing April 25, 1988.

HISTORY OF DISPUTE:

On January 25, 28, February 16, 17, 18, 19 and 22, 1988 Claimant was absent from his assignment on Extra Gang 58 at Tenaha, Texas without proper authority.

The Carrier notified Claimant to appear for formal investigation on the charge that he had possibly violated Rule 604 requiring employees to report for duty at the designated time and place and prohibiting them from being absent from duty without proper authority as well as Rule 607, which states indifference to duty or to the performance of duty will not be condoned. The investigation was held as scheduled. By letter dated April 21, 1988 the Carrier notified Claimant that as a result of evidence adduced at the investigation he had been found guilty of the charge and was dismissed from the Carrier's service.

The Organization grieved the discipline. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designed to handle such disputes. However, the dispute remains unresolved, and it is before this Board for final and binding determination.

FINDINGS:

The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act, as amended, 45 U.S.C. §§151 et seq. The Board also finds it has jurisdiction to decide the dispute in this case. The Board further finds that the parties to the dispute, including Claimant, were given due notice of the hearing in this case.

We are satisfied that substantial evidence supports the Carrier's conclusion that Claimant had violated Rule 604 by absenting himself from duty without proper authority on the dates in question, as well as violation of Rule 607. Claimant's prior record was less than exemplary in that he had been disciplined six (6) times for the same rule violations. Therefore, he was no stranger to Rules 604 and 607 and compliance thereof.

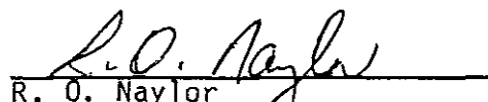
Accordingly, we must conclude that the record supports Claimant's guilt and permanent dismissal was completely justified under the facts of this case.

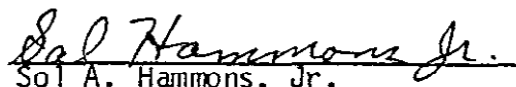
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AWARD

Claim denied.


William E. Fredenberger, Jr.
Chairman and Neutral Member


R. O. Naylor
Carrier Member


Sol A. Hammons, Jr.
Employee Member

Dated: Feb. 26, 1990