

PUBLIC LAW BOARD NO. 4373

PARTIES	SOUTHERN PACIFIC TRANSPORTATION CO.)	
	(EASTERN LINES))	
)	AWARD NO. 8
TO	AND)
)	CASE NO. 8
	BROTHERHOOD OF MAINTENANCE OF WAY)	
DISPUTE	EMPLOYEES)	

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement when Machine Operator J. A. Trevino was unjustly dismissed from service.
2. Claimant Trevino shall now be reinstated to his former position with all seniority, vacation rights and any other rights accruing to him unimpaired in addition to all pay lost commencing June 8, 1987, and to run concurrently until such time that Mr. Trevino is rightfully restored to service.

HISTORY OF DISPUTE:

At the time of the events giving rise to the claim in this case Claimant was working as a machine operator on the San Antonio Division.

On April 22, 1987 Claimant was tried and convicted of third degree felony theft (receiving and concealing stolen property) and sentenced to a prison term of seven years. Claimant appealed his conviction and remains free pending disposition of the appeal.

By letter of June 8, 1987 the Carrier notified Claimant to appear for formal investigation in connection with his conviction. By letter of June 23, 1987 the Carrier informed Claimant that as a result of the evidence adduced at the investigation he had been found guilty of violating Rule 607 providing that "[E]mployees must not be . . . (4) dishonest; (5) immoral;" and Rule L providing that "[E]mployees must conduct themselves in such a

manner that their Company will not be subject to criticism or loss of good will." The letter also notified Claimant that he 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 designated 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.

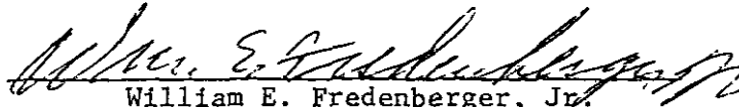
The question this Board must resolve is whether Claimant's conviction under the circumstances of this case substantiates Claimant's violation of the rules as found by the Carrier and warrants the discipline assessed.

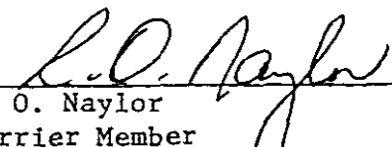
Claimant was convicted of receiving and concealing stolen property. Additionally, it appears that Claimant involved other members of his family and community in these activities. It would be hard to think of behavior more immoral or dishonest as defined in Rule 607. We believe this ground alone warranted Claimant's dismissal. We do not find the fact that Claimant's conviction is on appeal to be decisionally significant. Unless or until the conviction is reversed on appeal, the conviction stands and the Carrier is entitled to rely upon it.

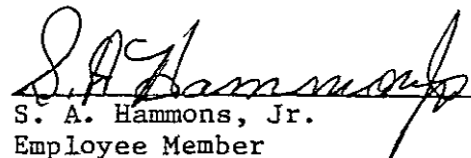
The Organization contends that Claimant was denied a fair and impartial investigation because the Carrier prejudged Claimant's guilt. Our review of the record in this case does not support that contention. While it is true that the Carrier relies exclusively upon the conviction itself, consistent with our holdings above it was entitled to do so.

AWARD

Claim denied.


William E. Fredenberger, Jr.
Chairman and Neutral Member


R. O. Naylor
Carrier Member


S. A. Hammons, Jr.
Employee Member

DATED: June 28, 1988