

Org. File 694-57-7960  
Co. File TRN 0-5-30

Decision No. 5737  
Case 1136  
Supplemental List No. 91

SPECIAL ADJUSTMENT BOARD NO. 18  
(Train Service Panel)

PARTIES TO DISPUTE: United Transportation Union-  
Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: Request of Brakeman Rick D. Rooney, Shasta District, Oregon Division, for reinstatement to service with seniority unimpaired and for replacement of wage loss resulting from his dismissal from service on March 6, 1985, as well as wage loss resulting from his attending an investigation on February 19, 1985, because of his alleged violation of Rules 801 and 802 of the Rules and Regulations of the Transportation Department, which occurred on February 10, 1985.

The superintendent, Oregon Division, responded to the Organization's appeal from this dismissal by reinstating Brakeman Rooney to service on or about July 21, 1986, preserving his right to appeal further for replacement of his ensuing wage loss. Petitioner, therefore, amends the claim to one for replacement of wage loss resulting from Brakeman Rooney's dismissal.

STATEMENT OF FACTS: On February 11, 1985, the Carrier directed the following notice to the Claimant:

"You are hereby notified to be present at the office of the Trainmaster, Dunsmuir, California, 9:00 a.m. Wednesday, February 13, 1985, for formal investigation to develop the facts and place responsibility, if any, in connection with your alleged failure to fill out Consent form for Toxicological Test, and your refusal to take toxicological urine test at Mt. Shasta Community Hospital, Mt. Shasta, California, as instructed by Trainmaster J. J. Plank, at approximately 12:23 p.m., February 10, 1985, while acting as brakeman on the 01-MERVY-09, SP Extra 9110 West.

"You are hereby charged with responsibility, which may involve violation of that portion of Rule 801, reading:

"'Employees will not be retained in the service who are careless of the safety of themselves or others, insubordinate . . . quarrelsome . . ., or who conduct themselves in a manner which would subject the railroad to criticism.'

"the second paragraph of Rule 801, reading:

"Any act of hostility, misconduct or willful disregard or negligence affecting the interests of the Company is sufficient cause for dismissal and must be reported."

"and that portion of Rule 802, reading:

"Indifference to duty, or to the performance of duty, will not be condoned."

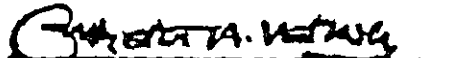
"of the Rules and Regulations of the Transportation Department of the Southern Pacific Transportation Company."


Subsequent to the investigation, the Claimant was dismissed. He was reinstated on a conditional basis on July 8, 1986.

FINDINGS: The Board finds, after hearing upon the whole record and all evidence 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 and it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

DECISION: It is the conclusion of the Board that the Carrier did in fact have probable cause to request the Claimant to submit to toxicological testing. The fact he left the property doesn't change this. See Decision No. 5734. Nor are we convinced that requiring the Claimant to take a test would constitute a violation of the hours of service law.

In view of the foregoing, the Claimant was clearly in violation of Rule 801 and significant discipline was in order. Considering the circumstances, the length of his dismissal will not be altered except to vacate the conditions of his July 8, 1986 probation effective with the date of this award.

  
Gilbert H. Vernon  
Chairman and Neutral Member

  
D. E. Torrey, Carrier Member

  
Glynn Gallagher, Employee Member

Dated this 11 day of May 1987  
San Francisco, California.