

PUBLIC LAW BOARD NO. 1795

Award No. 25
Case No. 25

PARTIES Southern Pacific Transportation Company (Pacific Line)
TO and
DISPUTE Brotherhood of Maintenance of Way Employees

STATEMENT "1. That the Carrier violated the provisions of the Agreement when as a
OF CLAIM result of a hearing held on May 16, 1977 it suspended Machine Operator Simon Jurado, May 9, 1977 through and including May 24, 1977, said action being arbitrary and in abuse of discretion.
2. Carrier further violated said Agreement when Division Engineer M.E. McGinley failed to give reason for denying claim, his letter of July 26, 1977 as provided for in Section 1(a) of Rule 44 of the parties Agreement.
3. That the Carrier now compensate Claimant for all time and wage lost suffered and the Claimant's service record be cleared of all charges."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Initially the allegation of Petitioner insists that the Division Engineer failed to give a reason for denying that the claim must be examined. In his letter, he stated "A further review of the testimony has been made. We feel there is no basis for this claim; therefore, your claim is denied in its entirety." While it is true that the reason for the rejection of the claim was simply the feeling that there was no basis for such claim, that statement was made allegedly grounded on a further review of the testimony. Although it might be desirable for there to be a more elaborate reason for the conclusion reached, we cannot concur with Petitioner's assertion. There certainly was ample reason given in the letter cited above.

Claimant was charged with failure to report for duty on April 15, 18, 19 and 20, 1977. The evidence indicates that Claimant admitted that he did not work on the four days in question. Petitioner argues that on at least two of the days Claimant was ill which ex-

cused his absence. In addition, Petitioner argues that on the first day, Claimant had used some four and a half hours of overtime to return to his headquarters in terms of compensatory overtime. The transcript however does not indicate any evidence whatever that such permission was granted for either being absent on the compensatory basis or for any other reason on the following days.

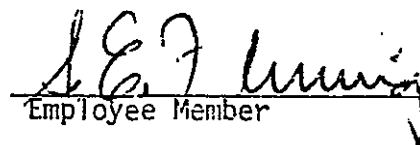
The evidence adduced at the hearing is certainly sufficient to support Carrier's conclusion that Claimant was guilty of the charges. Claimant had ten years of service and under the circumstances Carrier's conclusion as to the penalty to be imposed may not be considered harsh, arbitrary or in abuse of discretion. Hence the claim must be denied.

AWARD

Claim denied.



I.M. Lieberman-Neutral-Chairman


Carrier Member
Employee Member

November , 1979
San Francisco, California