

PUBLIC LAW BOARD NO. 1795

Award No. 28
Case No. 28

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

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the Agreement when on July 6, 1977 it suspended Crane Operator John Marxer for a period of ten (10) days effective July 18, 1977 through July 29, 1977 on charges not sustained by the record said action being in abuse of discretion.
2. That the Carrier now compensate Claimant for all time lost and that his record be cleared of 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.

On the date in question Claimant was working temporarily with an extra gang foreman since his equipment was down for repairs. On June 1, 1977 Claimant reported to the roadmaster and was instructed to work with a particular foreman with whom he had worked on the previous day. Claimant, assuming that the gang would work at the same location as they had on the previous day, drove to that location and waited for the gang to arrive. He waited for a period of seven hours without attempting to determine why the gang did not show up. He was subsequently charged with being indifferent to his assignment and after an investigation it was assessed that a ten day suspension was in order.

The facts involved in this dispute have not been questioned. Petitioner simply takes the position that Carrier has failed to sustain his burden of proof that Claimant violated the Carrier's rules as charged. Carrier, on the other hand, avers that Claimant's actions on the day in question of failing to find out where the work location was or to attempt to find out why the gang did not report was inexcusable.

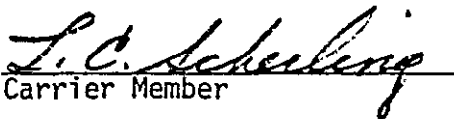
The transcript of the investigation reveals that Claimant did indeed go to a location and sit in his car for a seven hour period waiting for the gang to appear. It also reveals that there were two opportunities, one a continuing opportunity, for Claimant to have phoned or radioed to find the location of the work gang. The fact that Claimant did not avail himself of any opportunity or make an opportunity to find out where the work was to be on the day in question is sufficient to establish his guilt. It is incredible that an employee would sit through seven hours of waiting for the work gang to arrive without attempting to find out what the situation was. For this reason, Carrier's conclusion that Claimant was guilty is amply supported by the testimony at the investigation. With respect to the penalty, a ten day suspension for a dereliction of duty as indicated herein, in view of Claimant's five and a half years of seniority is not excessive. For the reasons indicated the claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman


Carrier Member

November , 1979
San Francisco, California


Employee Member