

PUBLIC LAW BOARD NO. 2439

Award No. 13
Case No. 13

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

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the Agreement when it suspended M.L. Anderson for a period of thirty (30) days commencing on May 5, 1978 on charges not supported within the transcript record, and further violated said Agreement in that Carrier representative failed to properly deny claim pursuant to the provisions of Rule 44.
2. That Claimant M.L. Anderson now be paid for thirty (30) days, including overtime loss, if any, at the respective pro rata rate of the position on which he was working at the time of suspension, and that his personal record be cleared of charges placed thereon as a result of the incident involved herein."

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.

Claimant herein was charged with having engaged in an altercation while riding on a Company bus on May 3, 1978. Following an investigation he was found guilty of the charge and assessed a thirty day suspension.

The incident in question involved Claimant having taken a pocket knife out of his pocket while riding on the Company bus to cut off some patches from his jeans. An another employee sat next to him and demanded that he put the knife away whereupon an altercation began in which both men were cut. It is noted that both employees received the same discipline as a result of the incident.

While the Organization admits that an altercation took place and that Claimant was certainly guilty, it insists that he was not the aggressor and hence should not have been punished to the same extent as the other employee. Petitioner alleges that the incident involved really concerned Claimant defending himself from an unprovoked attack by the other employee.

Carrier argues that there is no doubt about the specifics of the incident in question. Furthermore, Carrier insists that Claimant was certainly culpable for having used a knife under circumstances of a crowded employee bus when thus it became a potentially dangerous weapon. Carrier concludes that from the testimony at the hearing the discipline assessed was certainly commensurate with the offense committed and there is no basis for distinguishing between the discipline accorded the two employees involved.

An examination of the transcript of the investigation supports Carriers conclusion. Even though Claimant may not have been the direct aggressor in the incident he certainly was a participant and he must be considered to be culpable for the event. Since the transcript of the investigation reveals substantial evidence to support Carrier's conclusion there is no basis for questioning the conclusion of Claimant's guilt. Based on the nature of the incident, there can be no doubt but that the penalty assessed was neither harsh nor discriminatory nor an abuse of discretion. Therefore, the claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral Chairman


Carrier Member
Employee Member

March , 1980
San Francisco, CA