

PUBLIC LAW BOARD 2439

Award No. 102
Case No.102

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company

STATEMENT
OF CLAIM

- "(1) That the Carrier violated the provisions of the current Agreement by dismissing track laborer Mr. Terry DiPoma without just and sufficient cause.
- (2) That the Carrier now be required to reinstate Claimant DiPoma to his former position with seniority and all other rights restored unimpaired and with compensation for all wage loss suffered."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employee 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.

The record indicates that Claimant, employed by Carrier in February of 1984, was arrested on March 18, 1985. He was charged with having sold cocaine to an undercover agent from the State Narcotics Bureau on February 22, 1984. Subsequently he was charged with violation of Carrier's Rule "G" and also Rule N-801. A hearing was scheduled to be held on March 25, 1985, and was held even though Claimant did not appear at the hearing. Rule "G" provides as follows:

" The illegal use, possession, or sale by on or off-duty employees of a drug, narcotic or other substance which affects alertness, coordination, reaction, response or safety is prohibited."

Rule N-801 provides among other things that employees will not be retained in service who conduct themselves in a manner which would subject the Company to criticism.

The evidence introduced at the investigation reveals that a patrolman in Carrier's Police Department was involved in an on-going investigation in conjunction with the Utah State Narcotic Bureau, of alleged narcotics violations in the vicinity of Ogden, Utah. The patrolman in question was with a State Law Enforcement officer when Claimant sold to the latter officer the cocaine in question. Officer Morgan was later involved in the arrest of Claimant after a warrant had been issued. Carrier views the circumstances surrounding Claimant's arrest and violation of the rules as being extremely serious and warranting dismissal without any doubt. There is no question concerning Claimant's guilt, particularly since he did not deem it necessary to appear at the hearing for which he had received appropriate notice.

The Petitioner defends the Claimant's actions and requests that he be reinstated.

It is apparent from the transcript of the investigation that Claimant was guilty of an extremely serious charge in the attempted sale of cocaine to an undercover agent. This conduct is clearly prohibited

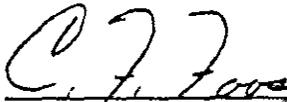
2439-102

by Rule G and also the impact of the act brought criticism at least potentially on Carrier in view of the publicity attendant upon the entire crackdown on the cocaine selling and narcotics abuse in the area.

There is no doubt therefore that Carrier was eminently justified in its decision to terminate Claimant and the claim must be denied.

AWARD

Claim denied.



C.F. Foose, Employee Member



I.M. Lieberman, Neutral-Chairman



H. Moles, Carrier Member

San Francisco, California

January 26, 1987