

PUBLIC LAW BOARD 2439

Award No. 107  
Case No. 107

PARTIES  
TO  
DISPUTE

Brotherhood of Maintenance of Way Employees  
and  
Southern Pacific Transportation Company

STATEMENT  
OF CLAIM

- "(1) That the Carrier violated the terms of the current Agreement when it dismissed welder M.R. McKenna, said action being unduly harsh and in abuse of discretion.
- (2) That the Carrier shall be required to reinstate Claimant with seniority and all other rights restored unimpaired, 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 had been employed by Carrier for approximately 11 years at the time of the incident herein. On December 12, 1984, he was convicted of operating a motor vehicle while under the influence of alcohol and was sentenced to serve 120 days in the County Jail. The sentence was to begin on February 25, 1985. During the period from December 12 through February 25,

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Claimant attempted to obtain a leave of absence to cover that period of time or to have his vacation rearranged to cover at least part of the period during which he was to be incarcerated. Carrier officials denied Claimant's requests.

On March 1, 1985, Claimant was addressed a letter informing him that because of his unexcused absences, he was terminated. Following his incarceration on May 7, a hearing was held and thereafter Carrier indicated that no justification had been found to reverse the decision to terminate him.

Petitioner argues that it would have been better for Carrier to have attempted to have Claimant participate in the Employees Assistance Program dealing with chemical dependence, rather than wait for him to be incarcerated and then fire him. Thus, Claimant, according to petitioner, should have been given an opportunity to rehabilitate himself and should not have been terminated. Carrier points out that it had no reason to do anything but reach the decision indicated and further, that after Claimant's incarceration, he was observed to have been in the vicinity of the Carrier's train station in an inebriated state, and furthermore, during the week of April 28th, he was sentenced to serve two years in the State Penitentiary for being under the influence of alcoholic beverage and causing bodily injury to another person. The Carrier indicated that there was no recommendation from its Employees Assistance counsellors that he

had made any attempt to rehabilitate himself following his jail sentence in the County Jail.

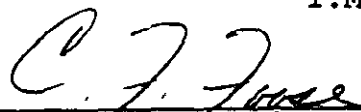
The record is clear that the absences which triggered the Claimant's dismissal were caused by his own actions resulting in incarceration. It has long been established that service in jail is not a valid reason for failure to protect an employee's assignment. This is particularly true under circumstances such as those involved herein. Further, Petitioner's position with respect to possible rehabilitation has no validity in a proceeding such as this, since that approach deals with leniency. The record is clear that Claimant's absence was caused by his own malfesence, resulting in the jail sentence. He made no attempt to rehabilitate himself and there is no justification for the claim whatever. The claim must be denied.

AWARD

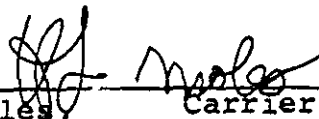
Claim denied.



I.M. Lieberman, Neutral-Chairman



C.F. Foose, Employee Member



H. Moles, Carrier Member

San Francisco, California

January 26, 1987