

PUBLIC LAW BOARD 2439

Award No. 108  
Case No. 108

PARTIES  
TO  
DISPUTE

Brotherhood of Maintenance of Way Employees  
and  
Southern Pacific Transportation Company

STATEMENT  
OF CLAIM

- "(1) That the Agreement was violated when the Carrier dismissed welder helper Jeffrey M. James on charges not sustained by the record, said action being unduly harsh and in abuse of discretion.
- (2) Because of the aforesaid violation, the Carrier will now be required to reinstate Mr. James with seniority and all 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.

Claimant had been employed by Carrier on May 18, 1984. On April 4, 1985, a letter was addressed to him indicating that he had been terminated for failure to protect his assignment. Carrier in that letter indicated that he had been absent without proper authority from February 28, 1985 through April 4, 1985. Following a hearing held on May 21, 1985, carrier indicated that it felt the evidence justified its earlier conclusions.

There is no question but that Claimant did not work on the dates indicated by Carrier. It is the position of the Employees that Petitioner had a communications problem with some of his supervisors. Nevertheless, as the record indicates, there were a series of telephone conversations with Claimant following his absence in February. During that time Claimant apologized for example on one occasion for not being at work and promised to return. His reasons for being absent varied from having the flu to food poisoning to lack of transportation and that he had been fishing for abalone. The evidence further indicates that Carrier made at least eleven attempts to telephone claimant to find out whether he was coming to work but received no response to the telephone call and no return of the call when messages were left.

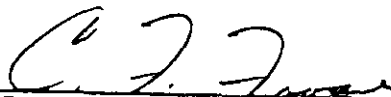
It is the Board's view that Claimant was afforded an opportunity to present evidence to support his position for the absences and failed to do so. His doctor's excuse presented subsequent to his termination was inadequate for that purpose and did not justify the absences during the entire period in any event. The record is clear that Claimant was guilty of the charges of failing to protect his position without proper authority and Carrier was within its rights under the Agreement to terminate him. The claim must be denied.

AWARD

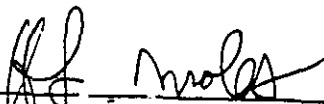
Claim denied.



I.M. Lieberman, Neutral-Chairman



C.F. Foose, Employee Member



H. Moles, Carrier Member

San Francisco, California

January 26, 1987