PUBLIC LAW BOARD NO. 2439

Award No. 114 Case No. 114

PAPTIES
TO
DISFUTE

Brotherhood of Maintenance of Way Employes
and

Southern Pacific Transportation <u>Comb</u>any

(Western Lines)

STATEMENT "1. That the Carrier violated the provisors of the OF CLAIM:

Current Agreement when in letter dated December 5. 1985 it dismissed Track Laborer R. E.

Brookover from its service on the basis of unproven charges, said action being in abuse of discretion.

Carrier shall now exonerate Mr. Brookover of all charges and reinstate him to his former position with the Carrier with seniority and all rights restored unimoaired and compensation for all wade loss suffered.

FINDINGS

Upon the whole record. After hearing, the Board finds that the narties herein are Carrier and Employees within the meaning of the Railway Labor Act. as amended. And that this Board is duly constituted under Fublic Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant filled out an employment application on April 11. 1984 for a position in Carrier a Maintenance. of Way department. He entered Carrier's service in that department on May 10, 1984.

--

On July 23. 1985. Claimant had an on the job related accident which was reported. He had also reported an accident on July II. 1985. As a result of these accidents Carrier investigated Claimant's earlier history including his medical history. Following that investigation. Carrier charged Claimant with knowingly falsifying his application. Following investigation he was dismissed for this infraction by letter dated May 5. 1985.

The investigation produced evidence that in response to question No. 7 which specifically asks whether the applicant had had an injury previously or had been represented by attorney in previous claims. Claimant responded "N/A." Claimant also failed to show his last employer in 1984 and the fact that an injury occurred while he was in the employ of that company. In fact, an injury occurred approximately one month prior to his application with this employer, and that injury resulted in a Workman's Compensation claim for which Claimant had retained an attorney.

It is apparent from the record that Claimant knowled to respond honestly to the questions propounded in the employment application and Carrier was correct in its determination that he was quilty of the charges. The claim must be defied.

AWAED

Claim denied.

The state of the s

H. L. Moles

Carrier Member

C. F. Foose

Employee Member

San Francisco. California

, 1988