

PUBLIC LAW BOARD NO. 2439

Award No. 124  
Case No. 124

PARTIES Brotherhood of Maintenance of Way Employees  
TO and  
DISPUTE: Southern Pacific Transportation Co. (Western Lines)

STATEMENT  
OF CLAIM:

"1. That the Carrier violated the provisions of the current Agreement when, in a letter dated January 3, 1986, it dismissed Laborer-Operator M. L. Linde from its service on the basis of unproven charges, said action being excessive, unduly harsh and in abuse of discretion.

2. Carrier shall now exonerate Mr. Linde of all charges and reinstate him to his former position with the Carrier with seniority and all other rights restored unimpaired and compensated for all wage loss suffered."

## 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.

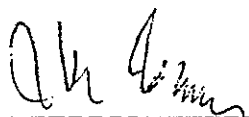
Claimant herein was involved in an on-duty accident on October 3, 1985, together with other employees. As a result, all of the employees were required to take urinalysis tests to determine whether or not they had been exposed to drugs or alcohol. One result of that test showed Claimant to be positive for both marijuana as well as amphetamines and methadone. Thereupon, he

was removed from service pending an investigation. At the request of Petitioner, the investigation was postponed to December 19, 1985 and at that investigation, Claimant admitted that the drugs were properly found in the urinalysis. Furthermore, he had participated in the Employee Assistance Program and Drug Rehabilitation Program prior to the investigation. Carrier's records indicate that Claimant had not contacted the Carrier, or the Employee Assistance Counsellor, since March of 1986, despite overtures by the Counsellor and the local Organization Chairman. Since rehabilitation was not successful from the Carrier's point of view, it had no choice but to terminate him.

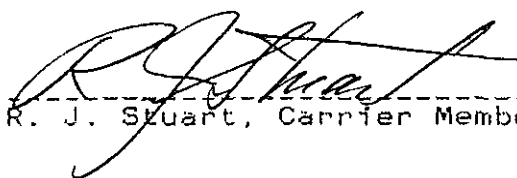
From the Board's point of view, the facts in this matter are clear and unequivocal. Claimant was found guilty of being under the influence of drugs while on duty and did not deny that status. While he entered the Rehabilitation Program, he made no attempt to secure his position back at the completion of that Program even though requested to do so by several individuals. Carrier was within its prerogative to determine that termination was the only answer and the Board so holds.

AWARD

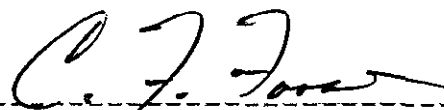
Claim denied.



I. M. Lieberman, Neutral-Chairman



R. J. Stuart, Carrier Member



C. F. Foote, Employee Member

San Francisco, California  
September 15, 1988