

PUBLIC LAW BOARD NO. 2439

Award No. 126
Case No. 126

PARTIES
TO
DISPUTE: Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company

STATEMENT
OF CLAIM:

- "1. The Carrier violated the provisions of the current Agreement when it dismissed Track Laborer Joseph R. Bouvia from its service on the basis of unproven charges, said action being in abuse of discretion.
2. Carrier shall now exonerate Mr. Bouvia of all charges and reinstate him to his former position with the Carrier with seniority and all other rights restored unimpaired and compensate him 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.

The record indicates that Claimant herein had been employed by Carrier since March of 1979. On February 26, 1985, at approximately 7:15 pm, Claimant was driving a Company vehicle on a causeway near Midlake, Utah and apparently hit a rock causing the vehicle to go off the road and hit an empty boxcar. Upon his

-2-

supervisor arriving at the scene, subsequently, it appeared to the supervisor, in addition to the accident to the vehicle, that Claimant had been drinking. He was subsequently charged with violating two Company rules. Rules G and M-801 dealing with safety. Following a hearing which was held on March 5, 1985, Claimant was found guilty of the charges and dismissed from Carrier's service. In the course of the hearing, Claimant admitted that he had two or three beers prior to coming on duty on the date in question. Subsequent to the investigation on March 12, 1985, Claimant secured other employment. On May 1, in the course of this other employment, he fell off a roof incurring serious injury. As a result of this injury he was comatose for two weeks and remained in the hospital for approximately four months. He had broken his neck, his arm, and had severe head injuries. The record also indicates that all parties to this matter agreed that the particular road on which the accident occurred is a dangerous one. It also should be noted that Claimant was instructed to take a physical examination on behalf of the Company on February 19, 1987, after he was released to go back to duty by his own physician. As a result of the Company's examination it was found that he was physically, at that time, unfit for service as a laborer on the Carrier.

Carrier takes the position that Claimant was clearly under the influence of alcohol when he came on duty, having admitted:

consumed at least two or three bottles of beer prior to that time on February 26. The Petitioner notes that Claimant insists that he was sober at the time of his accident, even though he admitted to having consumed some alcohol previously. Claimant argues that the condition of the road was the main cause of the accident, and there was no evidence to refute this claim, according to the Petitioner. The Petitioner also notes that this young man had a good work record prior to this incident and should not have been dismissed by Carrier.

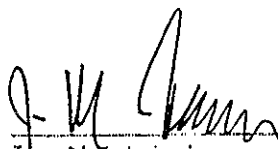
An examination of the record of this matter reveals without question that Claimant was in violation of Rule G at the time of the accident in this particular situation. That type of offense generally is recognized as a dismissal infraction, and for good reason. In addition, it is also obvious that there was no explanation for the accident by Claimant which was satisfactory on the record. Based on the entire record of this situation, it is the Board's view that dismissal was too harsh a penalty under the circumstances, particularly in view of Claimant's prior record. The Board believes that he should be reinstated to duty with all rights unimpaired, but as penalty for his clear violation, no compensation for time lost. His return to duty, however, shall be entirely conditioned on when and whether he passes a return-to-work physical examination to the satisfaction of Carrier.

AWARD

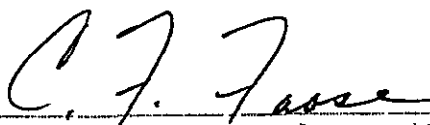
1. Claim is sustained in part.
2. Claimant shall be returned to service with all rights unimpaired, but without compensation for time lost. Time out-of-service shall be considered to have been a disciplinary lay-off. However, his return to active service shall be conditioned upon his successfully passing Carrier's required physical examination.

ORDER

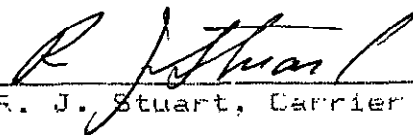
Carrier will comply with the Award herein within 30 days from the date hereof.



I. M. Lieberman, Neutral-Chairman



C. F. Foose, Employee Member



R. J. Stuart, Carrier Member

San Francisco, California
December 6, 1988