

PUBLIC LAW BOARD NO. 2439

Award No. 132

Case No. 132

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

STATEMENT
OF CLAIM:

- "1. That the Carrier violated the current Agreement when it dismissed Laborer-Operator C. D. Whitney. Said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier shall reinstate Claimant to his former position with seniority and all other rights restored unimpaired with pay for all loss of earnings suffered and his record cleared."

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 had been employed by Carrier in 1974. According to the record, on April 19, 1985, Claimant delivered a controlled

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sustance to an undercover police officer. He was convicted of dealing in drugs on December 31, 1985. In the interim, on August 8, 1985, Claimant was dismissed from service for violation of Rules B01 and M (having no relationship to the drug charges). On June 17, 1986, Claimant was reinstated to service on a leniency basis. Subsequently, he was charged with violation of Carrier's Rule 6 on June 19, 1986 and following a hearing, was dismissed from service due to the drug problem.

There is no question but that Claimant had been convicted of dealing in drugs. The only significant issue in this dispute is what Claimant's status was at the time of his conviction, even though at the time of his conviction in December of 1985 Claimant was not an employee, having been dismissed in the prior summer. The record is also clear that at the time of the actual dealing in drugs Claimant was indeed an employee of Carrier. There is nothing in the rules which mandates that a Carrier shall retain an employee in its service who has been guilty of dealing in drugs while an employee. Thus, Carrier's conclusions as a result of its investigation and charges was amply justified. The Claim must be denied.

AWAKE

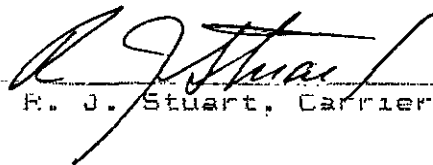
Claim denied.



I. M. Lieberman, Neutral-Chairman



C. F. Foose, Employee Member



R. J. Stuart, Carrier Member

San Francisco, California
December 6, 1988