

PUBLIC LAW BOARD NO. 2439

Award No. 139

Case No. 139

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 from its service Track Laborer S. L. Bennett. Said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier reinstate Claimant to his former Carrier position with seniority and all other rights restored unimpaired with pay for all loss of earnings suffered and his record cleared of all charges."

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 as a Laborer on April 27, 1981. By a letter dated September 25, 1986, Claimant was charged with violation of Rule G, failure to protect his job, destroying

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personal property belonging to a Company employee and for alleged theft of a radar detector from a vehicle belonging to a fellow employee on September 21, 1986. Claimant was notified of the hearing scheduled for October 16, 1986, but did not attend the hearing. Following the hearing, Claimant was found guilty of the charges and by letter dated November 11, 1986, was dismissed from Carrier's service.

The evidence at the hearing indicates that Claimant did not report for work on the morning of September 23, 1986, nor did anyone call to indicate that he would be off that day. Following the roll call, Carrier officers found Bennett asleep inside a camper on Carrier property. The Assistant Roadmaster's testimony was that by appearance and odor he believed that Mr. Bennett was under the influence of alcohol. Furthermore, when he woke Mr. Bennett that morning and asked why he was not at work, Bennett's reply was, "I need five more days to sober up". According to the Assistant Roadmaster, furthermore, Bennett responded to questions with respect to the break-in to a vehicle and stealing the radar detector that he would pay for the damages done and make restitution for the stolen radar detector. In addition to the evidence at the hearing, by letter dated January 11, 1988, Claimant tacitly admitted to the infractions with respect to stealing the radar detector and breaking into another employee's vehicle.

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The Petitioner insists that Carrier failed to conduct a fair hearing in that Claimant was not present. Furthermore, the individual who allegedly saw Claimant steal the radar detector was also not present at the hearing. In addition, the Petitioner argues that there was no direct evidence of Claimant using alcohol or drugs on the morning in question. There was no urine test which would have removed any vestige of doubt with respect to this aspect of the charge, according to Petitioner.

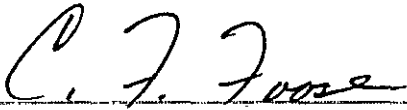
The Claimant received a proper notification by certified mail of the investigation. The fact that the letter was not delivered does not in any sense require or obligate Carrier to make any other attempt to contact Claimant. There was no allegation that the letter was not sent to his address which was recorded in his personnel file by Carrier. The evidence of this hearing is clear and unequivocal that Claimant was under the influence of alcohol and absent from his job on the morning in question. Furthermore, there is an admission in fact with respect to the stealing of the radar detector by Claimant, as well as evidence from the individual from whose car the equipment was taken. There is no doubt but that Carrier had a right to conclude from the evidence adduced at the hearing that Claimant was guilty of the charges. Thus, the decision to dismiss him was appropriate.

AWARD

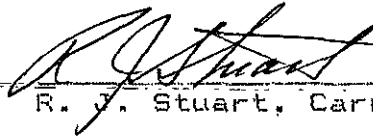
Claim denied.



I. M. Lieberman, Neutral-Chairman



C. F. Foose, Employee Member



R. J. Stuart, Carrier Member

San Fransico, California

1-10, 1989