

PUBLIC LAW BOARD NO. 2439

Award No. 140
Case No. 140

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 Machine Operator E. H. Purdue. Said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier 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.

The record indicates that Claimant herein was engaged in an altercation with another employee, Mr. Chapa, both of them working on a tie gang at the time. The altercation took place at

the end of a lunch hour and dealt with a window which had been smashed on the other employees (Mr. Chapa's) car. While the altercation was underway, the Foreman instructed Claimant to stop arguing and he refused to do so. A few moments later the Assistant Roadmaster, who also had witnessed the altercation, informed him to stop and when he refused to stop he took him out of service. There was additional testimony to the effect that Claimant herein had been involved in a series of incidents with fellow employees, including harassing them, cursing them and in general bullying them. It is also noted that the other employee who engaged in the altercation, Mr. Chapa, was also charged with various infractions and investigated after having been removed from service. Claimant was charged with being quarrelsome, insubordinate, entering into an altercation and committing acts of hostility and, as a result of these acts, incurring unfavorable news publicity involving the Company. He was also charged with aggravating and intimidating and harassing fellow employees while on duty.

The Petitioner insists that Claimant was not the provocateur in this situation while his opponent was the aggressor, having thrown a rock at Claimant. Thus from the Petitioner's standpoint, Claimant was acting merely in self-defense in his actions during the altercation. Thus, Petitioner insists that the penalty assessed was inappropriate under all the circumstances. Carrier,

on the other hand, indicates that the conduct of Claimant in this particular series of circumstances was intolerable and warranted the firmest and ultimate type of discipline. Carrier notes that it has the obligation to provide a safe workplace for its employees, and in this instance the actions of Claimant could not be condoned.

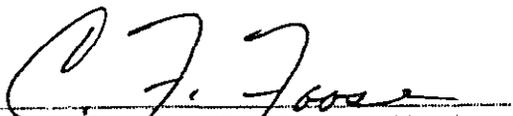
As the Board views it, the charges were amply established by the testimony produced in the course of the hearing. There is no doubt but that Claimant was insubordinate in refusing to heed both his own Supervisor's, as well as the Assistant Roadmaster's insistence on stopping the altercation. In addition, there was unrebutted testimony indicating his previous conduct in threatening and harassing fellow employees. Thus, as the Board views it, Carrier was amply justified in its conclusion that he was guilty of the specific charges. The discipline should not be disturbed.

AWARD

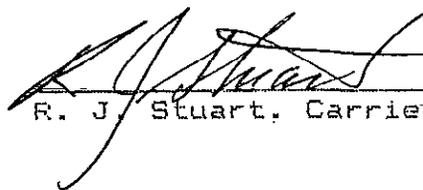
Claim denied.



I. M. Lieberman, Neutral-Chairman



C. F. Foose, Employee Member



R. J. Stuart, Carrier Member

San Fransico, California

1-10, 1989