PUBLIC LAW BOARD NO. 2439

Award No. 146
Case No. 146

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

STATEMENT   "1.   That the Carrier violated the cur-
OF CLAIM: rent Agreement when it dismissed
                       Mr. J. L. Stanger. 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.

The record indicates that on the morning of May 13, 1987,
Claimant was allegedly involved in an argument with another
employee. As a result of this argument Claimant filed an accident

report indicating that he had sustained an injury. Two days later, by letter dated May 15, 1987, Claimant was notified that he was removed from service and was charged with being involved in an altercation in violation of Carrier Rules 607 and 608. Following a hearing, by letter dated May 27, Carrier notified Claimant that he had been found guilty of the allegations and was dismissed from service.

This entire matter was somewhat bizarre, since the Hearing Officer's conduct was very questionable in his interrogation of witnesses. In addition, the strangeness of the entire circumstances was exemplified by the lack of witnesses to the alleged incident. The only real witnesses who produced testimony which related to the matter were Claimant and the other employee with whom he allegedly had had an altercation. The fellow employee indicated that nothing had occurred except an accidental bump of shoulders. Claimant's testimony indicated something more than that, but he was in a totally passive role based on his testimony. There was no other testimony going to the heart of the matter.

Carrier insists that there was substantial evidence of record to support its conclusions. Additionally, Carrier notes that it offered Claimant leniency on two occasions but he did not respond and refused to accept such leniency. Carrier concluded that Claimant was uninterested in continuing his employment with the

Company and that the Claim should be denied. The Petitioner on the other hand attacks the validity of the procedures in the course of the investigation, as well as noting the fact of lack of proof.

An examination of the transcript of the hearings indicates that Carrier has produced virtually no proof in support of its conclusions. The Supreme Court, as well as numerous Boards in this industry, has addressed the question of substantial evidence. The Supreme Court has said that substantial evidence is more than a mere scintilla. In fact, the Court indicated that relevant evidence might be such as a reasonable mind would accept as adequate in support of a conclusion. As this Board views it, there was absolutely no evidence in support of Carrier's conclusions. Therefore, the question of the substantiality of the evidence is moot. Carrier has simply not borne its burden of proof in support of its conclusion that Claimant warranted discipline. Based on this conclusion, the Board believes that Claimant shall be reinstated to his former position with all rights unimpaired and with compensation for time lost, less any outside earnings. His record should be cleared of any reference to this disciplinary action.
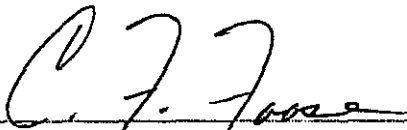
AWARD

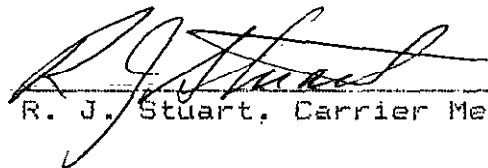Claim sustained in accordance with the
findings above.

ORDER

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

_____
I. M. Lieberman, Neutral-Chairman

_____   _____
C. F. Foose, Employee Member   R. J. Stuart, Carrier Member

San Fransico, California
            , 1989
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