

PUBLIC LAW BOARD NO. 2439

Award No. 15  
Case No. 15

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

STATEMENT  
OF CLAIM

1. That the Carrier violated the provisions of the current Agreement when it dismissed Claimant R.E. Constante, from the service of the Carrier on charges not sustained by the hearing record, said action being extremely in abuse of discretion.
2. That Claimant now be compensated for all wage loss suffered commencing on June 4, 1978 and all days subsequent thereto until his reinstatement."

## 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.

Carrier alleges that on June 14, 1978 while Claimant and the Gang in which he was working were being transported to the job site, they stopped at a grocery store to purchase some personal provisions. The Foreman involved claims that he observed Claimant buying and subsequently drinking a can of beer which was purchased at that store. The Foreman ordered the truck turned around and returned to headquarters. Subsequently, Claimant was removed from service pending formal hearing for an alleged violation of Carrier's Rule G.

Following an investigation in which Claimant denied having violated the rule in question Carrier found Claimant guilty and dismissed him from service. Subsequently, on July 31, 1979 it was agreed that Carrier would reinstate Claimant to service with seniority unimpaired but without compensation for time out of service. The sole matter before this Board is whether or not the infraction justified the penalty of lost pay for the period

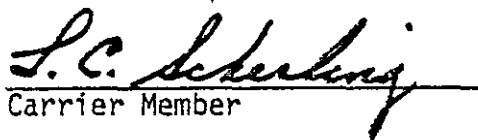
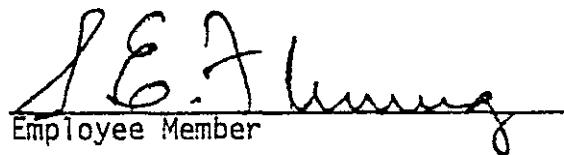
in question. A review of the transcript of the investigation indicates that there was substantial evidence to support Carrier's conclusion that Claimant was guilty of violation of Rule G. While the Board agrees that dismissal for the violation involving the drinking of a can of beer may be considered to be excessive under all the circumstances the suspension for the period of time involved herein certainly may not be considered excessive in view of the seriousness of the offense, and also in view of his prior record. It is well known that violations of Rule G frequently involve termination. It is not within this Board's jurisdiction to question the degree of penalty involved as long as it was not excessive, harsh or in abuse of discretion and in the Board's view in this instance, the penalty was fully justified. The claim must be denied.

AWARD

Claim denied.



T.M. Lieberman, Neutral-Chairman

  
Carrier Member  
Employee Member

San Francisco, CA  
July 21, 1980

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