

PUBLIC LAW BOARD NO. 2439

Award No. 153
Case No. 153

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company (Western Lines)

STATEMENT
OF CLAIM:

"That the Carrier violated the Current Agreement when it dismissed Mr. P. Moore from its service, said action being excessive, unduly harsh and an abuse of discretion.

"That the Carrier reinstate Mr. P. Moore 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 was charged with forging and cashing for his personal gain another employee's paycheck during the month of May, 1986. Following an investigatory hearing held on June 5, 1987 Claimant was found guilty of the charges and dismissed from service.

The record indicates that on May 6, 1986 Claimant's Foreman gave Claimant a payroll check for another employee, Mr. Watson, who at the time was on suspension. Watson never received the check and it was determined thereafter that the signature on the check was forged and had been cashed by Claimant. The record indicates that criminal charges were brought against Claimant and on May 21, 1987 he had pleaded no contest to the felony charge involving the cashing of the paycheck and forging the signature, and was sentenced to three years probation in addition to restitution and certain other fees. Carrier argues that since he pleaded guilty to the particular charges which were involved in a disciplinary action in the court proceeding it was not necessary to establish his guilt during the investigatory hearing. Petitioner argues that Carrier failed to accord Claimant due process when it did

not establish by evidence at his investigation his guilt of the charges. Furthermore Carrier waited an unreasonable length of time according to the Organization in bringing the action against Claimant.

The record indicates first that the process of investigating the alleged forgery took a considerable amount of time involving cooperation between Carrier's investigators and the police department involved outside of the Carrier's property. The time frame involved includes this investigation period as well as Carrier's decision to await the criminal case before making its determination with respect to the dishonesty alleged on the part of Claimant. Thus the time frame does not appear to be excessive under all the circumstances.


The evidence was clear that Claimant pleaded guilty to the charges in court. In fact at the investigation held by Carrier Claimant indicated that he must have cashed the check but that he was drunk at the time. He attributes his entire problem in this particular dispute to an alcohol dependency problem which he believed he could handle with some assistance. It is the Board's conclusion that the record demonstrates without doubt that Claimant was guilty of the charge of criminally and dishonestly forging the other employee's name and cashing a payroll check. Thus Carrier was within its rights in deciding that his actions should result in his termination. The Claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



R. J. Stuart--Carrier Member



C. F. Foote--Employee Member

San Francisco, California
August 31, 1989