

PUBLIC LAW BOARD NO. 2439

Award No. 154
Case No. 154

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. R. D. Dupre from its service, said action being excessive, unduly harsh and an abuse of discretion.

"That the Carrier reinstate Mr. Dupre 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 by Carrier on November 8, 1971. In June of 1987 he was a member of Bridge and Building Gang Number 8 and during that month had been assigned to perform repairs on a bridge over Tahkenitch Lake on the Coos Bay Branch in Oregon. That repair work included installation of new ties as well as associated materials and connectors. The Gang worked as they did normally on the bridge on June 25, 1987 (they had been working on this structure for several weeks). On June 26 the record indicates that the Gang arrived at the usual time at the worksite and without any particular direction from Management began preparing for the day's work. At that time they were notified that it was necessary to clear the structure for a train to pass over the bridge. While the train was crossing the bridge where they had been working, nine cars near the rear of the train derailed causing extensive damage both to the cars and to the bridge. Following this accident by letter dated July 3, 1987 Claimant, as well as other members of the Gang, were notified to appear for a formal hearing to place responsibility in connection with the accident and their alleged failure to maintain the bridge in a safe condition for the movement of trains on June 25 and June 26. Following the hearing

all members of the Gang were dismissed from service having been found guilty of violation of Carrier's Rules in that they did not keep the bridge in a safe condition as alleged in the charges.

Subsequent to the Hearing over a period of several months all members of the Gang with the exception of Claimant were reinstated to service on a leniency basis with no compensation for time lost. Mr. Dupre was offered reinstatement on a leniency basis without compensation by letter dated October 4, 1987. Subsequently, again, by letter dated January 13, 1988 he was offered reinstatement on a leniency basis with compensation beginning on October 29, 1987 which was the date when the last group of welders returned to service on the Gang. Claimant refused both offers of reinstatement, due to their conditions. Finally by letter dated May 17, 1988 Claimant was offered reinstatement of service without compensation for time lost and without prejudice to his Claim. He returned to work based on this letter on June 15, 1987.

Carrier takes the position that there was sufficient evidence at the Hearing to establish Mr. Dupre's partial responsibility in connection with the violations specified and which caused the accident in question. According to Carrier these actions or failures on the part of Claimant warranted dismissal.

The Organization takes the position that the evidence at the investigation clearly indicates that Claimant was not liable for the accident which occurred nor was he in violation of any Carrier Rules. According to the Organization the record indicates that the employees involved were instructed to perform their various activities on the bridge without any guidance or standards or indeed specific instructions from Carrier Supervisors. In fact, the Organization indicates that the testimony reveals that there are no written specifications with respect to how to leave a bridge which is having a tie renewal for the passage of a train. According to the testimony of the General Foreman the Organization points out that the instructions were simply passed on from generation to generation without anything being committed

to writing. In addition the Foreman of the Gang testified that he had never been instructed to do the work in any particular fashion. The Foreman testified that he believed that the structure was safe. Furthermore the Organization argues the Foreman made the judgment call, not the other members of the Gang. The Organization concludes that Claimant herein was unjustly disciplined for actions which were not his responsibility in the first place.

The evaluation of the testimony at the investigation reveals to the Board that it is impossible to determine from that record any responsibility on the part of Claimant for the accident. No employee can reasonably be held to be responsible for anyone else's actions and in this instance there is no specific indication of any wrong doing on the part of Claimant. Even more significantly Carrier's own rules for the maintenance of way structures (Rule 1211) provide that Foremen have charge of and are responsible for the safety of the structures on which they are working. It is the Board's belief that this case typifies a situation in which as the Organization alleges the Carrier was unable to distinguish between an operational and a disciplinary problem. In this particular series of circumstances involving the accident it is apparent that the responsibility for the mishap was not properly allocated to any individual employee. It was indeed a problem generated by operational failures on the part of Carrier. The fact that the other employees were given varying degrees of discipline based on their timing for reinstatement on a leniency basis has no bearing on this claim. It is apparent that Mr. Dupre was unjustly and improperly disciplined in this instance since there is no evidence to support Carrier's conclusion.

As a remedy as the Board views it, it would be appropriate to compensate Mr. Dupre for all losses sustained (earnings less outside earnings during the same period) for the period beginning June 27, 1987 through June 1, 1988. He of course shall be reinstated to his former position with all rights unimpaired and the disciplinary matter erased from his record.

AWARD

Claim sustained: Claimant shall be reinstated to his former position with all rights unimpaired and made whole for all losses sustained (less outside earnings) for the period from June 27, 1987 through June 1, 1988.

ORDER

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



I. M. Lieberman, Neutral-Chairman



for R. J. Stuart - Carrier Member

C. F. Foose - Employee Member

San Francisco, California
August 31, 1989