

PUBLIC LAW BOARD NO. 2439

Award No. 16
Case No. 16

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

STATEMENT
OF CLAIM

"1. That the Carrier violated the provisions of the Agreement when it dismissed Shovel Helper T.N. Bates from its service, said action being unduly harsh and in abuse of discretion.

2. That Claimant T.N. Bates be reinstated to the service of Carrier with seniority and all other rights restored unimpaired and that he be compensated for all time lost."

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.

Following a hearing held on October 20, 1978, Claimant herein was dismissed from service. Prior to the investigation he was working as a Shovel Operator. The incidents in dispute took place on September 25, 1978 and September 26, 1978.

According to the Carrier the Claimant was instructed, on September 25, 1978, to take care of a fuel hose which was being used to transfer gasoline, a hazardous substance. At approximately 1:00 P.M. on that day, the Shovel Operator was asked where his helper was and went to look for him but could not find him anywhere. He could not find him between the hours of 1:00 and 3:30 P.M. on the day in question. According to the Carrier on September 26, 1978 Claimant reported to work a few minutes late and when he was asked where he was on the previous day became argumentative and quarrelsome with the Shovel Operator. Carrier insists that Claimant's actions on the two days were in violation of its Rules and Regulations, specifically Rules 801 and M-810.

Petitioner's contention essentially is that the actions involved did not warrant the excessive discipline which was assessed. Petitioner argues that Claimant insisted that he did not leave his assignment early but was simply attending to other duties which included oiling and greasing a shovel which was parked a short distance from the location where the fuel transfer was being made.

An examination of the transcript of the investigation reveals that Claimant himself admitted in his testimony that he left his specific assignment after about an hour without permission. He then proceeded to lubricate a shovel which had not been in use for some time for the remainder of the day. He also admits that he was late on the following day although makes no comment with respect to having been quarrelsome or argumentative at the time he reported on the following day. From this evidence as well as the evidence from some Carrier witnesses, it is evident that Claimant was in violation of the two rules cited. It is not even required that a credibility finding be made since Claimant's own testimony substantiates the charges made. (With the exception of that pertaining to being quarrelsome and argumentative)

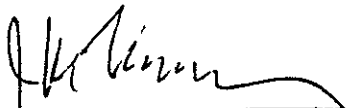
There remains the question of whether or not the discipline assessed was excessive in view of the fact that Carrier has produced substantial evidence in support of its conclusions. Carrier relied in part on Claimant's prior record in the determination of the penalty to be assessed. That record indicates that he had been assessed demerits in 1975 and in 1976 for violations of Rule 810, in both instances, because of absenteeism and poor attendance record. He had been warned prior to that time because of his attendance record. He was dismissed in August of 1976 for another violation of Rule 810 and was subsequently reinstated on a lencency basis in November of 1976. Following that time he was warned once again in 1977 for violations of Rule 810. It is also noted that Claimant herein entered the Carrier's service in January of 1974.

It must be concluded based on the Claimant's prior record and the nature of the vio-

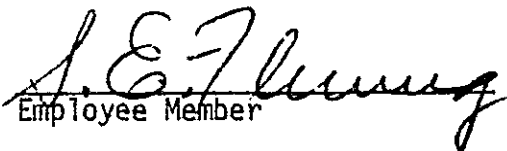
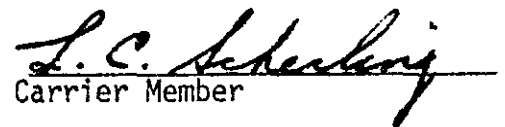
lations herein that Carrier was not arbitrary or capricious in assessing a dismissal penalty in this instance. Claimant's prior record over a relatively short period of service amply justifies the conclusion reached by Carrier. The claim must be denied.

AWARD

Claim denied.



M.M. Lieberman, Neutral-Chairman


Employee Member
Carrier Member

San Francisco, California
April , 1980