

PUBLIC LAW BOARD NO. 2439

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

STATEMENT OF CLAIM:

1. That the Carrier violated the current Agreement when it dismissed M& W. E. Jones from its service, 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, 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 Claimant had been employed by Carrier for approximately 3 1/2 years. At the time of his termination, Claimant was a fuel truck driver with a rail gang. The record indicates that his last compensated work day was September 21st, 1987. Thereafter, he was on a scheduled vacation from September 28th through October 2nd, 1987. Claimant never returned from work following his vacation and was terminated by a letter dated November 24th, 1987, for being absent without proper authority. Following an investigative hearing requested by Claimant, Carrier reaffirmed its termination.

The record reveals that Claimant has some serious personal problems. His vacation request was triggered by the fact that he had a father who was involved in a terminal illness at a local Veteran's Hospital. This problem was compounded by the fact that Claimant's wife left him at that time. Claimant's testimony at the hearing indicated that he had tried on several occasions to notify the gang foreman, or someone in charge with respect to his continued problems and need for a leave of absence. Furthermore, the testimony indicated that Claimant had sent a request for a leave of absence, in the form of a letter to Carrier in mid November. Carrier's testimony indicated that the letter indeed had been received, but was never answered. Carrier's testimony indicated that the leave had not been approved, since Claimant had serious absentee problems prior to this entire incident. By letter dated February 27th, 1989, Claimant was offered a leniency reinstatement which was refused.

The Organization's position in this matter indicates that Claimant's good faith should not be questioned in this entire matter. He had a serious personal problem. Furthermore, his supervisors were aware of the nature of his problem. In essence, the Organization argues that even though Claimant did not follow the letter of the rules in question, with respect to his request for a leave of absence, he had no choice in the actions which he took given the nature of his personal problems. Therefore, the Organization believes that the penalty of dismissal was unwarranted and grossly excessive.

Carrier takes the position that there is no doubt but that Claimant was guilty of the charges since he had failed to secure a leave of absence, and nevertheless was absent for an extended period of time without authority. Carrier believes that its discipline in this instance was appropriate and should not be disturbed.

It is the Board's view, that it is quite clear, that Claimant did not abide by Carrier's rules. Thus, Carrier was within its rights in its termination decision. However, in view of the particular circumstances of this dispute, it is quite clear that Claimant had extenuating circumstances to explain his extended absence. Furthermore, he apparently (without denial) made a good-faith effort to secure a leave of absence to cover the period in question. Nevertheless, he is clearly culpable for the absence without authority as charged by Carrier. Carrier, on the other hand, in this instance exercised its authority, in a rather harsh manner. It is this Board's belief that dismissal is too severe a penalty for the particular offense in this case. Therefore, that penalty shall be reduced to a disciplinary suspension covering the period out of work. As a consequence, Claimant will be reinstated to its former position with all rights, including seniority unimpaired, subject to a return-to-work physical examination, but without compensation for time lost.

AWARD

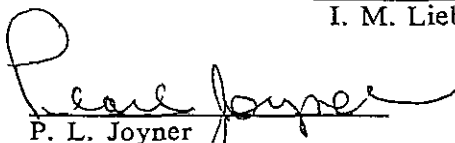
Claim sustained in accordance with the Findings above.

ORDER

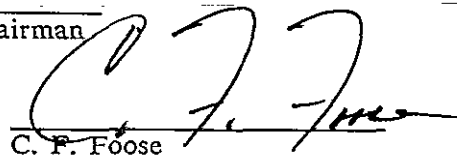
Carrier will comply with the Award herein within 30 days from the date hereof.



I. M. Lieberman, Neutral-Chairman



P. L. Joyner
Carrier Member



C. F. Foose
Employee Member

San Francisco, California
May 20, 1991