

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 Mr. T. Spencer from its service, said action being excessive, unduly harsh, and in abuse of discretion.
2. That the Carrier reinstate Claimant to its former Carrier position, with seniority and all other rights restored, and 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.

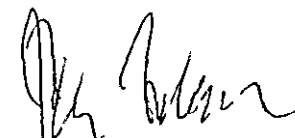
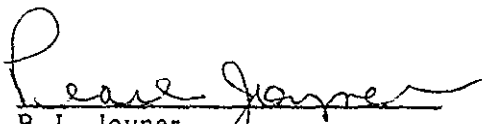
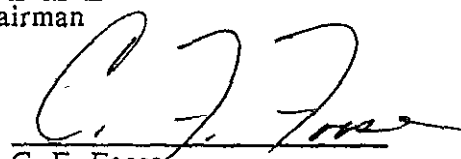
Claimant herein started working for Carrier on October 17th, 1983. He was terminated by letter dated October 9th, 1987, which indicated that he had been absent from work, without authority, since September 14th, 1987. Following Claimant's request for a formal hearing, that hearing was held on December 21st and December 22nd, 1987, and subsequently, Carrier notified Claimant that its initial decision would stand and he was terminated.

The record indicates without dispute, that Claimant had been off due to an unknown illness. By letter dated September 3rd, he was requested to make an appointment for a physical examination, which was then scheduled for him on September 14th. He did not show for that examination. Subsequently, a letter dated September 24th, scheduling another physical examination for October 8th. He failed to show for that appointment also. In addition, he made no attempt to contact Carrier since his absence. At the investigation, Claimant indicated that he was under the impression that he was on sick leave and did not need to respond to Carrier's letters. He also indicated that he had had some car problems, which accounted in part for his failures, including that of not appearing at the initial date of the investigative hearing, which he had requested.

The record is clear that Claimant did indeed violate the rules cited by Carrier, with no mitigating circumstances indicated. Carrier was within its rights to determine that Claimant services should be terminated. This is particularly true since he had violations under similar circumstances on three prior occasions. The conclusion is inescapable that Claimant is not correct in his position, and Carrier's position must be sustained.

AWARD

Claim denied.

I. M. Lieberman, Neutral-Chairman  
P. L. Joyner  
Carrier Member  
C. F. Foote  
Employee Member