

PUBLIC LAW BOARD NO. 2439

PARTIES
TO
DISPUTE:

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

STATEMENT OF CLAIM:

1. That the Carrier violated the provisions of the current Agreement, when on December 2, 1988, it terminated Track Laborer, I. H. Porros, employment relationship with the Southern Pacific. Said action being unwarranted and in abuse of discretion.
2. That the Carrier reinstate Claimant to his former position with seniority and all other rights restored unimpaired, with compensation for all loss 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.

The record indicates that Claimant had been employed by Carrier on May 7, 1986. At the time of his dismissal he was a laborer assigned to an extra gang. He was discharged by letter dated December 2, 1988, for failure to work after November 11, 1988. Following a formal hearing held on January 11, 1989, the dismissal was reaffirmed by Carrier.

The record indicates that on November 12, 1988, on a weekend and a rest day of Claimant, he was pulled over by the Police Department in Redding. The police discovered a warrant for Claimant's arrest for failure to pay a fine in 1983. He was put in jail on the basis of the warrant for his arrest, going back 5 years. He was kept in jail apparently for approximately 30 days, during which period of time he was terminated by Carrier. During the handling of the dispute on the property, Carrier made the point in a letter dated March 16, 1989, that Claimant had been scheduled to appear in court on February 22, 1989, and he failed to do so, following his arrest on January 7, 1989.

Petitioner took the position that discharge was not warranted under the peculiar circumstances of this case, and furthermore Carrier's position with respect to matters which occurred following his dismissal were inappropriately raised. Carrier, on the other hand, felt that incarceration was not an acceptable reason for absence for employment, and based on well-established authority, it believed it had the right to terminate him.

The careful examination of the record indicates that the circumstances surrounding Claimant's incarceration were unique. In the opinion of the Board, those circumstances, and his incarceration do not, per se, warrant permanent dismissal. Therefore, the Board believes that permanent dismissal was too severe a penalty for Claimant's absence under all the circumstances, and therefore he should be put back to work in his former position with all rights unimpaired, but with no pay for time lost. This, again, must be reiterated to have been a unique circumstance, which is not applicable to other cases.

AWARD

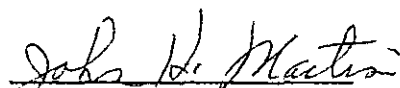
Claim sustained in part. Claimant will be returned to service, with all rights unimpaired, but with no pay for time lost.

ORDER

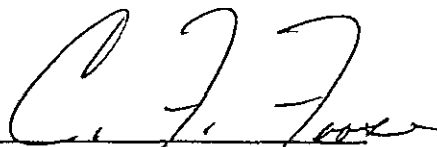
Carrier will comply with the Award herein within 30 days from the date hereof.



I.M. Lieberman, Neutral-Chairman



P. L. Joyner
Carrier Member



C. F. Foose
Employee Member

San Francisco, California
March 30, 1993