

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 dismissal of Track Laborer, R. F. DeLaRosa, for alleged violation of Carrier's Rules 806, 607 and 618 was arbitrary and capricious on the basis of unproven charges and in violation of Agreement.
2. The Claimant shall be reinstated with seniority and all other rights restored unimpaired, he shall have his record cleared of all charges levied against him and he shall be compensated for all wage loss suffered.

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 entered Carrier's service in April of 1970. From the record it appears that Claimant had been having problems with his back since April of 1989. In early May of 1989, he was required to use a new type of saw, which according to the record, was cumbersome and more difficult to operate than the saw which he had been using in the past. On May 8, 1989, his back was

hurting him and he went to a doctor. Following that doctor's visit, some weeks later, he filed an accident report alleging that he had an injury on May 8, 1989. His accident report indicated that he had reinjured his back on May 8. That injury report was filed on June 23, 1989. Subsequently, he was charged with violation of the three Carrier rules indicated above, specifically for late filing of an injury report, using defective equipment and dishonesty. Following a hearing, he was found guilty of the charges and dismissed from Carrier's service.

A careful evaluation of the entire record of this matter indicates some very strange and anomalous circumstances. For example, there was no indication whatever that Claimant was attempting in any way to deprive or defraud Carrier in any fashion. There was no indication in short of bad faith on his part, and he filed no suits against Carrier. Furthermore, the date he chose to indicate the accident was the only date on which he saw a doctor. He made no allegation of a particular event on that day in his injury report or in his testimony during the investigation of this matter.

It is clear that the Claimant was late in filing his injury report. However, the evidence fails to show any dishonesty on his part and also the charge of using defective equipment, fails for lack of evidence. The equipment in question was awkward and difficult to use, but was never indicated as being defective. In short, the only proof to support Carrier's allegations was the clear-cut evidence that the injury report was late. It must be pointed out first that Claimant had filed injury reports in the past, and second that he was not exactly totally familiar with Carrier's rules having had merely a third grade education. However, he certainly was aware that he should have filed an injury report at the time of the alleged incident.

All in all, the penalty of dismissal for this particular offense seems totally unwarranted. Many other employees who have filed injury reports late have not been terminated, and in this instance there was no apparent basis for such termination, particularly in view of Carrier's failure to establish any factual basis for much of its charge. In short, the penalty assessed in this instance was too severe for the infraction involved.

The Board finds that the penalty in this instance was too severe, and Claimant should be reinstated to his former position with seniority and all other rights unimpaired, but that his losses of wages for the period involved shall only be compensated in part. He should be made whole for one year's pay covering the last 12 months of his being in a dismissal state, less any outside earnings during that period of time. The balance of the time out of work shall constitute the discipline for the particular offense.

AWARD

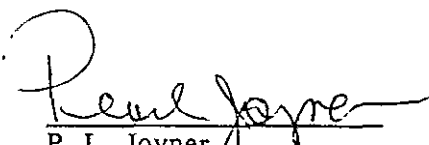
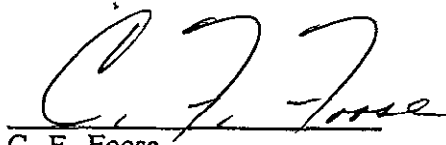
Claim sustained in part as indicated above.

ORDER

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



I. M. Lieberman, Neutral-Chairman


P. L. Joyner
Carrier Member
C. F. Foose
Employee Member

San Francisco, California
April 30, 1993