

PUBLIC LAW BOARD NO. 2439

Award No. 17
Case No. 17

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

STATEMENT "1. That the Carrier violated the provisions of the current Agreement
OF CLAIM when on January 2, 1979 it dismissed Mr. J.W. Ramsey, III, without first according him a fair and impartial hearing pursuant to Rule 45 of the current Agreement, said action being in abuse of discretion.

2. That Claimant Ramsey be compensated for all time lost including any overtime that may have been worked during the period he was held off his assignment."

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.

This is a disciplinary case in which Claimant was initially dismissed and later reinstated without compensation for time out of service thus converting the dismissal to a six month suspension.

The transcript of the investigation reveals that on Friday, December 8, 1978 Claimant reported to his regular assignment at San Jose, California. Being informed that his pay check had inadvertently been sent to another location (San Luis Obispo, CA) some 200 miles away, Claimant telephoned his supervisor requesting transportation to retrieve his check. He had previously secured his foreman's approval subject to the approval of the overall supervisor. The supervisor refused Claimant's request and instructed him not to take a train but to remain on the job and that he would do something to have the pay check returned. Approximately two hours later, the record

indicates that Claimant absented himself, caught a train to San Luis Obispo in direct disobedience of his instructions. The record also indicates that Claimant was in extreme need of the funds from his pay check at the time.

Following an investigation, held on ex parte basis, Claimant was disciplined to the extent of dismissal. Claimant did not appear at the hearing in question.


It is noted that Claimant had some five years of service with Carrier and apparently an unblemished prior record. An evaluation of the entire record including the attitude of the supervisor as expressed to Claimant on the day in question leaves the Board to conclude that the discipline assessed was arbitrary and excessive. Even though Claimant should not have taken it upon himself to secure his check after a direct order to the contrary, there is some small justification for his action in that there was apparent indifference to his plight by some Carrier officers. Therefore, it is concluded that the discipline must be modified. The discipline will be reduced to a sixty day suspension and Claimant will be made whole for the remaining period in which he was out of service.

AWARD

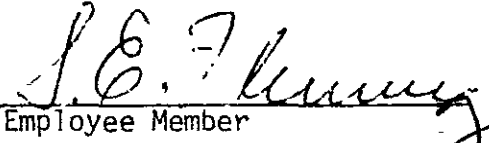
The claim is sustained in part; Claimant will be made whole for all time out of service except for a sixty day disciplinary suspension as indicated above.

ORDER

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


I.M. Lieberman, Neutral-Chairman


Carrier Member


Employee Member

March , 1980
San Francisco, CA

PUBLIC LAW BOARD NO. 2439

INTERPRETATION #1 OF AWARD NO. 17

In Award No. 17 of this Board, the Award indicated that Claimant would be made whole for time out of service except for a sixty day disciplinary suspension. The original claim in that dispute in its paragraph 2 asked that Claimant be compensated for "all time lost including any overtime that may have been worked during the period he was held off of his assignment." The implication of the Award was that Claimant was awarded back pay for a period of approximately four months, since he had been out of service for a period of six months as a result of the infraction involved herein. Following the decision this Board in March of 1980 Claimant was paid straight time for the four month period in question but claimed as well approximately 100 hours of overtime worked by members of the gang in question which had been paid for at the punitive rate of time and one half.

Petitioner's position in this matter is that the claim specifically requested compensation for all time lost including any overtime and that the Board's decision that Claimant be made whole for the remaining period of time clearly indicated that he should have been compensated for the overtime which he requested. Carrier takes the position that the record of the dispute shows no evidence of any monetary loss for overtime by Claimant. Further, Carrier argues that it is not known as to whether or not Claimant would have worked any overtime if it had been offered to him. Further, Carrier insists that there is no agreement authority or practice or precedent supporting a claim such as this.

The Board notes initially that the question of whether indeed a Claimant such as the individual involved herein might have worked the overtime if it had been offered him is a speculative one at best. Further, the record is devoid of any evidence whatever to indicate that there would have been any overtime for Claimant for the period in

question. Principally because of the speculative nature of requests such as this, it has long been the practice of Boards as well as the Divisions of the National Railroad Adjustment Board to consider a proper payment for time not performed as pro rata rather than penalty pay. In the instant dispute, the Board did not intend that the phrase "making whole" would apply to anything but regular work pay for the period of time lost.


For the reasons indicated above, the decision in Award No. 17 did not contemplate the payment of overtime, or any punitive rate, to the employee involved in this dispute during the time he was to be compensated for time out of work.



I.M. Lieberman, Neutral-Chairman



L.C. Scherling, Carrier Member



S.E. Fleming, Employee Member

January 26, 1981
San Francisco, CA