

PUBLIC LAW BOARD NO. 2439

Award No. 18  
Case No. 18

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

STATEMENT  
OF CLAIM

"1. That the Carrier violated the provisions of the current Agreement when it dismissed Speed Swing Operator, Mr. J.M. Peais, for his alleged violation of Carrier's Rule 801 which action by the Carrier is unduly harsh, excessive and in abuse of discretion.

2. That Claimant Peais be reinstated to his rightful position as Speed Swing Operator with seniority and all other rights restored, unimpaired, and compensated for all time lost as a result of said dismissal."

## 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.

By letter dated January 10, 1979 Claimant was notified of the hearing and charged with violation of Rule 801 which provides in pertinent part as follows:

"Employees will not be retained in service who are ... dishonest  
...."

Specifically, Claimant was charged with having reported service performed receiving compensation for November 20, 21 and 22 and December 5, 1978 when he did not indeed perform service on those days. Following an investigation Claimant was found guilty of the charge and dismissed from service.

Claimant entered Carrier's service February 18, 1967. Claimant had been working on system steel gang in Fairfield, California when his position was abolished. He elected

to exercise his seniority at Corvallis, Oregon. On the days of November 20 and 21, 1978 Claimant drove to Oregon from California arriving on November 22. November 23 was Thanksgiving Day and on November 22 he expressed his desire not to commence working until November 24 which was indeed the day on which he commenced working in the new gang. The record indicates that on Claimant's time roll which he prepares which was submitted at the end of November 1978 he claimed eight hours pay for November 20 and 21 for time not worked apparently for travel time. For November 22 Claimant claimed eight hours regular time worked. Also, subsequently, Claimant made a claim for two hours overtime for December 5, 1978 when in fact he did not work overtime. With respect to the December 5 two hour overtime matter, the record indicates that Claimant was made aware by his foreman that he was not entitled to the overtime whereupon he requested that the foreman have the error corrected. According to Claimant's testimony, the foreman agreed to make the correction and therefore, Claimant assumed that it had been taken care of. The record indicates that it was not taken care of.

Carrier asserts that Claimant had ten days without pay which was permitted under the Agreement for purposes of moving. Furthermore, Carrier maintains that November 20 and 21 which were allegedly used for traveling, Claimant coupled that activity with personal business which required him to take more time than normal for the 550 miles involved. In short, Carrier claims that for the two dates there was no justification for sixteen hours of travel time. Carrier indicates further that on November 22 Claimant was dishonest in that he claimed that he worked for that day and did not and also the two hours overtime on December 5. Carrier points out that Claimant was responsible for putting in his own time records.

The Organization argues that Claimant was not dishonest at all. He did indeed travel 550 miles which required the two days, November 20 and 21. Furthermore, he was on the job on November 22, not at home. Additionally, Petitioner alleges that on December 5, 1978 the General Foreman approved his overtime initially and later told him

that he should not have claimed it. Thus, Claimant instructed the Foreman to remove the two hours from the time records. The Organization points out that Claimant was not good at record keeping and that, at best, there were three mistakes or a mixup involved and there was no dishonesty. The Organization insists that the fact that Claimant was forced to make a major move of some 550 miles to a new gang had some bearing on the time problems which he encountered.

The record indicates that Claimant had been disqualified as a Foreman previously for lack of ability to handle the administrative aspects of that position. Although he had received several warnings, there was no evidence of prior dishonesty on his record. It seems clear from an examination of the transcript of the investigation that Claimant was indeed traveling on November 20 and 21. He apparently did not wish to go to work until after the Thanksgiving holiday; thus appearing for work at 12:30 in the afternoon on November 22 was indeed not appropriate from the standpoint of his reporting a full day of work on that date. Also, there apparently was some confusion about the December 5 date and Claimant should not have requested the two hours overtime which he later admitted and asked the Foreman to remove from his time records. Thus, the dispute devolves upon whether or not the alleged dishonesty for November 22 and December 5 warranted dismissal.

Claimant was not a new employee and knew well what the reporting requirements were. His inability to handle paperwork does not excuse him or absolve him from responsibility with respect to his time records. However, this Board concludes that dismissal after his long period of service for the two hours on December 5 and the one day of November 22 in which he did indeed report to work, although did not actually work, was excessive. Claimant should have been disciplined for the bad reporting regardless of the reasons for same but should not have been dismissed. For the reasons indicated therefore, the discipline assessed shall be changed to a six months suspension. He should be made whole for the remaining period of time in which he was out of work in accordance with Rule 45 (b).

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AWARD

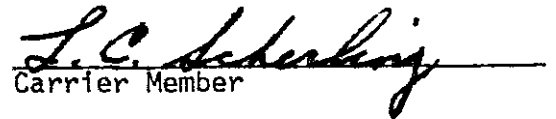
Claimant will be reinstated to his former position with all rights unimpaired and the discipline assessed will be converted to a six months suspension; he will be made whole for the balance of the period in which he was out of work under the terms of Rule 45 (b).

ORDER

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



I.M. Lieberman, Neutral-Chairman

  
Employee Member  
Carrier Member

San Francisco, California  
April , 1980