

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 current Agreement when it dismissed Trackman, W. D. Borsheim. Said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier reinstate Claimant to his former Carrier position with seniority and all other rights restored 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.

The record of this dispute indicates that Claimant had been dismissed for failure to protect his employment on September 26, 1989. Based on an appeal, on his behalf, by his Organization, Carrier agreed to reinstate Claimant to service on a leniency basis with the understanding that he would have a full release from the Chief Medical Officer. This was understood and agreed upon. Claimant took his

reinstatement physical examination on December 13, 1989, and part of the examination had been inadvertently omitted. A second appointment was rescheduled for January 4, 1990, and on that date, among other things, a urine specimen was required and submitted. The specimen was tested and found positive for marijuana. For this reason, Claimant received a notification of a formal hearing dealing with his alleged violation of Carrier's Rule G for being tested positive for an illegal drug. The hearing was held as scheduled and Claimant, although duly notified, did not appear. Following the hearing, which was held on an ex parte basis, Claimant was found guilty of violation of Carrier's Rule G, and dismissed from service. The record also indicates that Claimant never contacted the Employee Assistance Counselor for an evaluation, which was part of Carrier's drug program and about which he had been informed. In fact, the record also indicates that Claimant had been dismissed once at an earlier time for a violation of Carrier's Rule G, and had been counselled and treated through the Employee Assistance Program. For the 19 months following his dismissal, Claimant had not made any contact with Carrier's Employee Assistance Counselors. The Organization believed that Claimant should be reinstated since he had not appeared at the hearing. The Board must note that the precedent is clear, that the failure of an employee who was put on notice of an investigation to appear, without earlier requesting a postponement, is insufficient basis for his reinstatement or for the claim being sustained. To rule differently, would render the disciplinary process null and void.

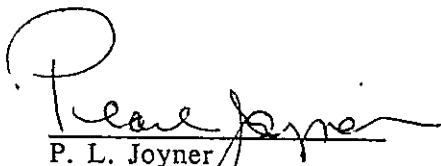
In this case, there is no doubt but that Claimant was guilty of being in violation of Rule G. This was his second infraction. He did not seek treatment or assistance to deal with his problem. Carrier found him guilty, as charged, based on the evidence of the drug test, which had been administered. There is no basis for sustaining the charge, and it must be denied.

AWARD

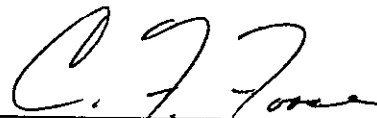
Claim denied.



I. M. Lieberman, Neutral-Chairman



P. L. Joyner
Carrier Member



C. F. Foote
Employee Member

San Francisco, California
April 30, 1993