

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 Machine Operator, R. Ramirez. 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.

Claimant had been a Tamper Operator and had just returned to work from convalescing due to an on-duty injury on May 22, 1990. On that date, with his tamper down, Claimant was instructed to tighten bolts with the gang. The roadmaster approached on a hyrail and found that Claimant was fouling a main line without protection. Furthermore, the foreman testified that Claimant had

balked at his assignment, since he was not on his regular machine. As a result, Claimant was charged with a violation of a series of Carrier rules due to his fouling the main line and also due to insubordination in not performing his assigned tasks. He was found guilty of the charges after an investigation and was dismissed from service.

Two months following his dismissal, Carrier decided that Claimant had suffered sufficient penalty for his infraction and offered to reinstate him to work. Claimant refused, deciding to carry forward with his appeal of the discipline. Ultimately, Claimant did accept Carrier's offer of return-to-service and reported to duty on May 13, 1991.

A review of the record of this dispute, indicates that Claimant did indeed violate Carrier rules by fouling the main line, and also did not perform exactly as his foreman had asked him to do on the day that his machine was down. The Board, however, concludes that those two infractions did not warrant the excessive discipline of dismissal under the circumstances indicated. This was far more than required to drive home the point Carrier was making. Claimant's absence from service for the lengthy period of time was due in part to his own refusal to accept Carrier's offer to return him to work. However, in spite of that, it is clear that the discipline involved here should not have been dismissal, nor should it have involved any lengthy period of time out of service. For the reasons indicated, since Claimant has already returned to service, the Board believes that 2 months pay is adequate compensation for the excessive discipline, which was invoked in this instance.

AWARD

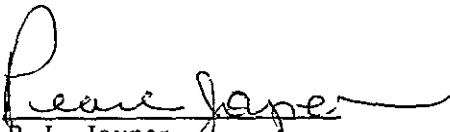
Claim sustained in part. Claimant shall be compensated for 2 months pay due to the excessive nature of the discipline imposed.

ORDER

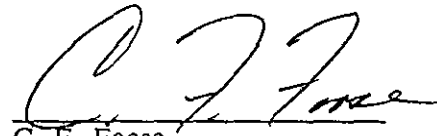
Carrier will comply with the Award herein within 30 days from the date hereof.



I. M. Lieberman, Neutral-Chairman



P. L. Joyner
Carrier Member



C. F. Foose
Employee Member

San Francisco, California
April 30., 1993