

PUBLIC LAW BOARD NO. 2439

Award No. 24
Case No. 24

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

STATEMENT "1. That the Carrier violated the provisions of the Agreement when in
OF CLAIM letter dated July 2, 1979 Mr. R.R. Bland was advised to the effect
that as a result of formal investigation held at Willits, California,
June 13, 1979 establishes responsibility for violation of Rule 801
and for the reasons stated as follows: "...you are hereby dismissed
from the service of the Northwestern Pacific Railroad Company....",
said action by Carrier is unduly harsh, excessive and in abuse of
discretion.

2. That Mr. R.R. Bland be reinstated to the service of the Northwestern
Pacific Railroad Company, that he be placed on his rightful position
with seniority and all other rights restored unimpaired, and that he
be paid for all wage loss suffered therefrom and that his personal
record be cleared of the charges thereon."

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 was employed by Carrier on September 20, 1976. At the time of the incident herein, he was serving as a Bridge and Building Foreman on Gang No. 4 at Fort Seward, California working ten hours per day, Monday through Thursday.

The record indicates that on May 3, 1979 while working on his regular position, he reported to work at 6:30 A.M. for the shift which was scheduled to end at 5:00 P.M. At approximately 8:00 A.M. he absented himself from work for the remainder of the day but reported himself present for the full day of work on the time roll. Carrier charged Claimant with deliberately falsifying his time roll by showing himself on duty when he actually was absent. Following an investigatory hearing, Claimant was dismissed

by notification dated July 2, 1979.

While there is some conflict in the testimony at the investigation, those conflicts were resolved by the Hearing Officer and substantiated the facts indicated above. Based on those facts, there is no doubt but that Claimant willfully falsified his time record for the date in question. It is noted, however, that his supervisor was aware of the fact that his time records were incorrectly entered on the day in which the incident occurred. For reasons which were not explained at the investigation, the supervisor permitted the time record with the improper entry to be forwarded for payment.

While it is clear that Claimant, as a Foreman in particular, was well aware of the necessity for maintaining accurate records and in fact, obviously from the investigation, deliberately falsified his records for the day in question, certain other facts must be taken under consideration. Although Claimant was guilty as charged, he did indeed have the benefit of a spotless record over a relatively short period of employment during which time he was promoted to Foreman. In addition, there are circumstances unexplained of a supervisor being aware of the falsification but permitting the record to be sent forward. Those two circumstances require consideration in the judgment of the Board. The discipline invoked was excessive. Although the Claimant should have known better and therefore must be made aware of the consequences of this act, he should not have been dismissed. Therefore, the Board concludes that Claimant should be reinstated to his former position with all rights unimpaired but without compensation for time lost.

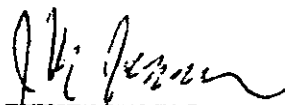
AWARD

Claim sustained in part; Claimant will be reinstated to his former position with all rights unimpaired but without compensation for time lost.

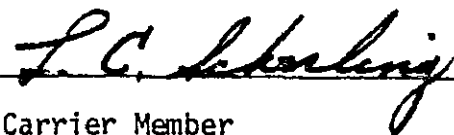
ORDER

Carrier will comply with the Award herein within sixty (60) days from the date hereof.

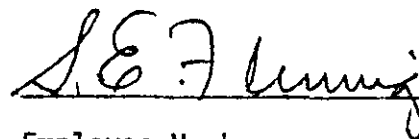
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I.M. Lieberman, Neutral-Chairman



Carrier Member



Employee Member

San Francisco, California
July 21, 1980

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