

PUBLIC LAW BOARD NO. 2439

Award No. 25
Case No. 25

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

STATEMENT "1. That the Carrier violated the provisions of the current Agreement
OF CLAIM when in letter dated September 10, 1979 it advised Mr. Alfredo Macias to the effect that he was suspended from service of the Carrier for a period of eighteen (18) working days beginning August 21, 1979 through September 14, 1979. Said action by the Carrier is unduly harsh, excessive and in abuse of discretion.

2. That Mr. Alfredo Macias be compensated at the applicable rate of his assigned position for any and all time lost, and his personal record be cleared of all charges placed thereon as a result of his wrongful suspension."

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, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The facts in this dispute are not substantially contested by either party. On August 20, 1979 Claimant assigned to an Extra Gang was assigned the work of clearing weeds at a particular location. At approximately 3:15 P.M. his Foreman, Mr. Norman, instructed Claimant to assist other employees in the work of loading the weeds into the back of a truck. At the time, Claimant who was assigned to the Gang as a truck driver, was engaged in the work of cleaning out the bed of his assigned truck. After he asked for a pitchfork for the work in question and found there was none available, he was instructed to use a long handled shovel to perform the work. According to the record, at this point he indicated that he was a truck driver and didn't have to do the work. The Foreman at that juncture took the shovel on which Claimant was leaning away from him in a vigorous and abrupt manner. In response, an altercation took place in which Claimant punched the Foreman and the Foreman caught Claimant and ultimately the two men were

separated by another member of the Gang.

Claimant was suspended from service on the following day and an investigative hearing was held on August 28. A separate hearing was held for the Foreman involved in this dispute. Following the investigation by letter dated September 10, Claimant was suspended for a period of eighteen working days.

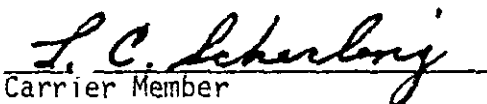
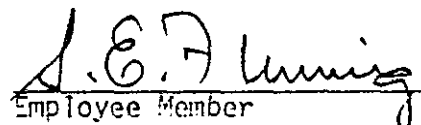
It is clear from the evidence adduced at the investigative hearing that a fist fight did take place. Indeed Claimant admitted that such an altercation occurred. The only mitigating circumstances referred to by Petitioner was that Claimant attempted to get away from the Foreman and that the Foreman was the aggressor in the altercation. The Board is of the opinion that the question of who the aggressor was in terms of the actual fisticuffs is immaterial. It is obvious that an altercation took place in which both men were involved to a significant degree. Whether Claimant threw the first punch or the Foreman is not material. Claimant's attitude was belligerent as was that of the Foreman. In view of the seriousness of an altercation of this type during working hours on the property there is no doubt but that a penalty should have been assessed on the culprits. In this instance, eighteen working days is far from excessive in the view of this Board. There are no reasons to ascribe prejudice, arbitrariness or other improper motives on the part of the Carrier and there is no basis for disturbing the penalty.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman


Carrier Member
Employee Member

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