

PUBLIC LAW BOARD NO. 2439

Award No. 29
Case No. 29

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

"1. That the Carrier violated the provisions of the current Agreement when on April 14, 1980 it dismissed Track Laborer G.H. Gehrke from its service for his alleged violation of Rule M-810 of the General Rules and Regulations, said action being unduly harsh and in abuse of discretion.

2. That Track Laborer Gehrke be reinstated to the service of the Carrier with seniority and all other rights restored unimpaired and that he be compensated for all time lost."

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 herein, following an investigation, was terminated after Carrier found him guilty of being absent without proper authority on a series of dates including March 20 through March 26.

There is no question but that Claimant was absent without authority on the days indicated and subsequently as well. Thus, Carrier was correct in assuming and concluding that Claimant was guilty of the charges which involved violation of Rule M-810. This Board's function in a dispute such as that herein consists of determining first whether or not the investigation supports with substantial evidence Carrier's conclusion of guilt on the part of Claimant. The second function of this Board is to determine whether or not assuming that Carrier was correct in its initial conclusion with respect to guilt, the penalty was appropriate and neither harsh, discriminatory nor an abuse of discretion.

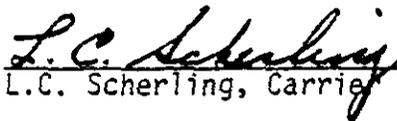
In the case at bar since Carrier's case was amply supported by the evidence secured at the investigation, the sole remaining matter is the measure of discipline. In view of the fact that Claimant had a relatively short period of service (less than three years) and that Carrier bent over backwards in an attempt to adjust any problems which might have caused the absences involved in this dispute, the Board cannot see itself interfering with the decision reached by Carrier with respect to the penalty. Under all the circumstances the ultimate penalty of dismissal, in this instance, cannot be deemed to have been discriminatory, harsh and an abuse of discretion. Hence, the claim must be denied.

AWARD

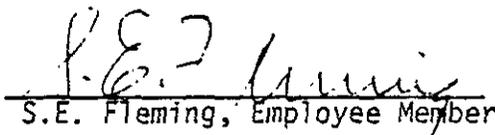
Claim denied.



I.M. Lieberman, Neutral-Chairman



L.C. Scherling, Carrier Member



S.E. Fleming, Employee Member

January 26, 1981
San Francisco, CA