

PUBLIC LAW BOARD NO. 2439

Award No. 32  
Case No. 32

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 July 15, 1980 it dismissed Mr. Westley E. Eden from service on charges not sustained within the hearing record, said action being unduly harsh and in abuse of discretion.

2. That Mr. Westley E. Eden be returned to the service of the Carrier with seniority and all other rights restored unimpaired, that he be compensated for all wage loss suffered beginning June 4, 1980 and continuing until such time as he is reinstated to his rightful position, and that his personal record be cleared of any charges placed thereon as a result of the formal hearing."

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 removed from service on June 4, 1980 pending a formal investigation. He was charged with certain irregularities concerning the purchase of gasoline which was charged on a company credit card. Following the investigation, Claimant was dismissed from service.

On the date in question, the Company truck assigned to the welding gang to which Claimant was assigned was out of service. Claimant was required by his foreman to utilize his personal vehicle to accomplish the work designated by the Carrier during the time when the Company truck was disabled. According to the testimony, Claimant, in good faith, obeyed the instructions of his supervisor concerning the use of his own car to perform the work in question. He never questioned the compensation which would be al-

lowed concerning the use of his vehicle. On April 29, Claimant admittedly used the Company credit card to purchase ten gallons of gasoline which he put into his personal car. He then proceeded to use that car to perform Company business. Subsequently, Claimant was made aware of the fact that he would be allowed compensation at the rate of 23¢ per mile for the use of that vehicle on Company business.

An examination of the transcript of the investigation reveals a number of anomalies. First, it is clear that Claimant attempted to cover up the purchase of gasoline for his vehicle using the Company credit card but later admitted, at the hearing, that that was indeed what the gas was used for. It is also clear that he did not know at the time that he put gasoline in his car, that some compensation was to be allowed him for using his vehicle for Company business. It is also clear that Rule 30(d) of the Agreement which provides for the 23¢ per mile allowance does not contemplate an employee using his private vehicle to haul or transport Company equipment or for other work purposes.

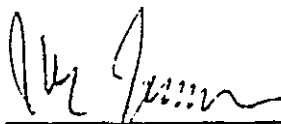
While the Board recognizes that Claimant had had a previous disciplinary incident involving dishonesty, the circumstances involving the incident herein are beclouded. At worst, Claimant can be charged with having used poor judgment and having lied about that poor judgment. The dishonesty, per se, is of a minor variety at worst. While it is clear that Carrier was correct in determining that Claimant was guilty, it is this Board's observation that the penalty imposed under the circumstances herein was severe, harsh and arbitrary. There are varying degrees of dishonesty just as there are varying degrees of other types of infractions of rules. In this instance, the Board concludes that Claimant shall be reinstated to his former position with all rights unimpaired but without compensation for time lost as the penalty for his questionable actions.

#### AWARD

Claim sustained in part; Claimant will be returned to work in his former position with all right unimpaired but without compensation for time lost. The period of out of work will be considered a disciplinary layoff in view of the infraction contained in the original charge.

ORDER

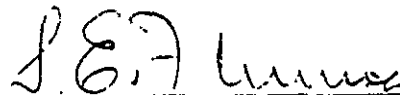
Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I.M. Lieberman, Neutral-Chairman



L.C. Scherling, Carrier Member



S.E. Fleming, Employee Member

January 26, 1981  
San Francisco, CA