

PUBLIC LAW BOARD NO. 2439

Award No. 46  
Case No. 46

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

STATEMENT  
OF CLAIM

- "1. That the Carrier violated the provisions of the current Agreement when on April 16, 1981 it notified Tractor-Bulldozer Operator, Mr. James M. Peais that his services with the Carrier had been terminated as a result of evidence adduced at formal hearing held April 10, 1982 which established Claimant's responsibility for being in violation of Carrier's Rule 810, said action by the Carrier being excessive, unduly harsh and in abuse of discretion.
2. That Mr. Peais now be reinstated to his rightful position of Tractor-Bulldozer Operator with seniority and all other rights restored unimpaired, compensated at the rate applicable to that position for all time lost therefrom and his personal record be cleared of the charges placed thereon as a result of the Carrier's allegation relative to the rule infraction."

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 notified by letter of a hearing to be held on February 27, 1981 for charges of authorized absence since February 9, 1981 and hence, a violation of Rule 810 of Carrier's General Rules and Regulations. Following a series of postponements the investigation was held on April 10, 1981 and following the hearing Claimant was dismissed as being guilty of the charges.

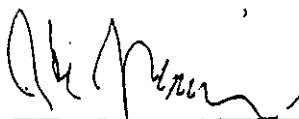
The record indicates that the Claimant herein who had been employed by Carrier for some fourteen years was incarcerated from February 9 through March 22 for driving while under the influence of intoxicants. This fact is not in dispute.

Carrier takes the position that Claimant was absent from his employment for that period of time without authority for an act of his own volition. Petitioner argues that the penalty of dismissal under the circumstances of this situation was harsh and excessive and should not be permitted to stand. Carrier disagrees.

The Board, upon study of the transcript, notes that Claimant's prior record during his fourteen years of tenure was not a good one. In addition to demerits of a significant quantity earlier, he had been dismissed from service in 1979 for violation of Carrier's rules with respect to dishonesty. That discipline was subsequently reduced to a six months suspension by this Board. Furthermore, he has had a series of talks with management with respect to his work practices concerning absenteeism and violations of Rule G since 1975. Under those circumstances in view of Claimant's clear guilt in this instance due to his incarceration, Carrier was well within its rights to determine that dismissal was the appropriate penalty. The Board will not substitute its judgment for that of Carrier in this instance since there are no mitigating factors requiring such action. Thus, the claim will be denied.

AWARD

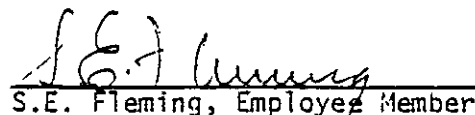
Claim denied.



I.M. Lieberman, Neutral-Chairman



San Francisco, CA  
March 10, 1982



S.E. Fleming, Employee Member