

PUBLIC LAW BOARD NO. 2439

Award No. 49

Case No. 49

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 Agreement when in letter dated July 7, 1981, it advised Claimant S.L. Gonzales that his services with the Carrier were terminated as a result of a hearing conducted on June 23, 1981, said action being unduly harsh and in abuse of discretion in light of Claimant's length of faithful service with the Carrier.
2. That S.L. Gonzales be returned to his former position with seniority and all other rights restored unimpaired and be compensated for all time lost therefrom as a result of the Carrier's actions."

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 was employed by Carrier on September 15, 1969. He was dismissed following a hearing held on June 23, 1981. He had been charged with immoral conduct and also a second charge of unexcused absence from work from April 1, 1981 through May 12, 1981.

The record indicates that on February 4, 1981, Carrier received a telephone call from a mother complaining that Claimant had raped her young daughter several times. She questioned Carrier as to why such employees were permitted to work for the Company. Following this phone call, Carrier initiated an inquiry which revealed that a complaint had been filed against Mr. Gonzales on January 30, 1981 with respect to the alleged rape. On February 2, 1981, Claimant plead guilty in court to a reduced charge of child molesting. Subsequently, on March 18, 1981, Claimant was sentenced to two years in

prison and of that sentence he was placed on probation for two years and was required to serve a balance of sixty days remaining of 180 days in custody. He was scheduled to begin serving his time on April 1, 1981 with a release date of May 12, 1981. He was also required to register as a sex offender.

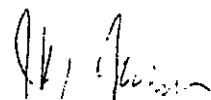
On March 30, 1981 Claimant filed a written request for a leave of absence from Carrier for a period of ninety days to "take some time to set my affairs in order." The request was received on March 31 and was denied by Carrier on April 2, 1981. There was also testimony to indicate that he told his supervisor that he had to go to Mexico to take care of some business which was the reason for the request.

Petitioner insists that the quantum of discipline accorded Claimant in this situation was excessive. Furthermore, Carrier could indeed have granted the leave requested as leave of such type had been granted in the past without reasons being attributed to the request by employees. Carrier, on the other hand, indicates that its rationale for dismissing Claimant was ample and that it had no desire to retain in service employees guilty of what it considers a heinous crime. Furthermore, Carrier points out that the Claimant was less than forthright in his reasons given for requesting a leave of absence. In any event a leave of absence for being incarcerated is not a valid reason to grant a leave.

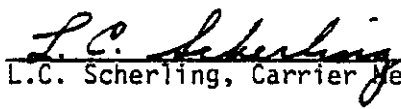
The Board finds that the record of the investigation in this matter clearly supports Carrier's conclusion that Claimant was guilty of the charges against him. He obviously was guilty of a crime which was considered to be highly immoral, properly by Carrier, and furthermore, was absent without authority following the denial of his request for a leave of absence. The claim must be denied. There is no basis for mitigation.

AWARD

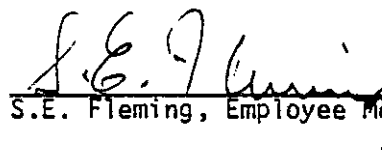
Claim denied.



I.M. Lieberman, Neutral-Chairman



L.C. Scherling, Carrier Member



S.E. Fleming, Employee Member

San Francisco, California
July 8, 1982