

PUBLIC LAW BOARD NO. 2439

Award No. 51
Case No. 51

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, in letter dated September 30, 1981, it advised Track Laborer Raymon S. Rico to the effect that evidence adduced at a formal hearing held with him as accused on September 22, 1981, established his responsibility in connection with having submitted a falsified accident report on August 11, 1981 which constituted a violation of Carrier's rule 801, and for reasons thereof he was thereby dismissed from service, said action being excessive, unduly harsh and in abuse of discretion in light of Claimant's many faithful years of service with the Carrier.
2. That Claimant be reinstated to his position as Track Laborer on Extra Gang No. 29 with seniority and all other rights restored unimpaired, that he be paid for all wage loss suffered commencing the date he obtained his doctor's release to return to service, and that the charges placed on his discipline record as a result of the allegation now be expunged therefrom."

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 employed by Carrier on March 22, 1960. At the time of the incident involved herein, he was a Track Laborer on an Extra Gang headquartered at River Station, California. On that date the Claimant's gang was replacing cross ties. Prior to the trucks departing from the work site, the foreman had assigned two men to clear ties from the roadway. The foreman left the work site first and a second truck bearing three employees including Claimant left subsequently driven by one of the three employees. On the following morning, August 11, 1982, Claimant reported to his foreman that he had been injured the day before when leaving work in the truck driven by the other employee, Mr. Bustamien.

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He claimed that the injury was incurred when Mr. Bustamente jumped a tie which was cross wise in the road. Mr. Bustamente denied, at the hearing subsequently, that there were any ties in the road or that the truck went over any ties.

The Claimant filed a report of injury and subsequently a medical report dated September 4, 1981 indicated that he had received an incarcerated umbical hernia which "could have resulted when he was bounced in the back of a pick-up truck" from his physician. The Claimant also indicated that he had a bruised coxyx as a result of the accident of going over the ties.

Following a hearing held on September 22, 1981, Claimant was advised by letter dated September 30 that he was found guilty by Carrier of having submitted a false accident report on August 11 and was therefore, terminated from the service of the Carrier.

An examination of the transcript of the investigative hearing indicates a great deal of conflicting evidence with respect to the incident in which the injury allegedly occurred. Additionally, although Carrier's physician doubted that an injury such as the suffered by Claimant could have occurred in the manner indicated, his report of the examination of Claimant certainly corroborated the fact that he did indeed have a tender coxyx and had suffered an umbical hernia which had been operated on.

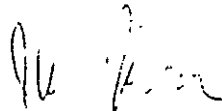
Under the circumstances of Claimant's long tenure and the ambiguity of the testimony which would indicate falsification, the Board is not inclined to accept the ultimate penalty of dismissal as appropriate in this instance. There was apparent confusion with respect to the day in question including the fact that the foreman had left the three employees on their own at the work site for reasons which are not very clear. Thus, the Board concludes that the penalty assessed against Claimant, in this instance, was inordinate and excessive. Claimant shall be reinstated to his position upon submission of a full medical clearance to Carrier and, of course, subsequent to the normal return to work requirements having been met by him.

AWARD

Claim sustained in part; Claimant shall be returned to service following the submission of a full medical release and after complying with Carrier's normal return to work requirements.

ORDER

The Carrier shall 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

San Francisco, CA
July 8, 1982