

PUBLIC LAW BOARD NO. 2439

Award No. 66

Case No. 66

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the current agreement when in letter dated July 20, 1982, it advised Crane Operator D. A. Kuykendall to the effect that evidence established in hearing held July 7, 1982, developed that he was in violation of Rule 810 of the Carrier's Rules in that he was absent without proper authority since January 10, 1982, and, for reasons thereof, the termination notice dated May 18, 1982, was thereby affirmed and his seniority and employment with the Carrier had been terminated effective May 18, 1982, said action being excessive, unduly harsh and in abuse of discretion.
2. That claimant, D. A. Kuykendall, be reinstated to the service of the Carrier with seniority and all other rights restored unimpaired and that he be paid 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.

The record indicates that claimant, who had been employed by Carrier since 1972, requested and was granted a leave of absence for a period of 29 days effective December 10, 1981. He was to report back to duty on January 10, 1982. Carrier heard nothing further from claimant until such time as a notice of termination was sent to him in May of 1982, and he acknowledged receipt of that termination letter on May 19, 1982. Subsequently, claimant requested an investigation be held with respect to his being terminated. That request was made on June 14, 1982, and a hearing was convened on July 7, 1982. Subsequently, Carrier reaffirmed its decision to terminate claimant's services.

Petitioner insists that claimant was under the impression that his leave of absence, which had been for both personal leave and also was considered to be a medical leave by him, had been extended by Carrier. Under Rule 33(d) of the agreement, the Organization notes that employees on sick leave shall not require written leaves of absence but may be required to furnish satisfactory evidence of their sickness or disability upon return to service. Under that rule, claimant did not have to file, according to the Organization, for any additional leave but simply had to furnish proof of his sickness or disability upon his return. In addition, the Organization notes that Carrier made no attempt to contact claimant until the termination notice following the expiration of his leave and, furthermore, the penalty of dismissal was unduly harsh, excessive and in abuse of discretion.

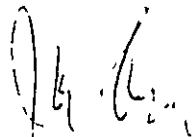
Carrier notes that the leave of absence which claimant secured was for personal business reasons. Carrier asserts that claimant was well aware of the provisions of Carrier's leave of absence program, having experienced five personal injuries prior to his absence in the case herein. Thus, claimant was obviously aware of the fact that he had to stay in touch with Carrier during his period of medical leave if, indeed, it was a medical leave. Furthermore, at the investigation, the testimony indicated that claimant was not in the hospital during this period of absence but had seen medical aid three or four times during the period that he was off work. Most significantly, Carrier notes that attempts to contact claimant during his period of absence were unsuccessful. In fact, other agencies and individuals, including claimant's attorney, attempted to contact claimant with Carrier's aid but to no avail. Most significantly, there was no evidence of any medical problems introduced into the record of the hearing to indicate that claimant was incapable of returning to work due to an incapacity. Furthermore, it was apparent that claimant had either a drug or alcohol problem which was the cause of some of his difficulties.

The Board notes that claimant was under the obligation, if his reliance on Rule 33 is to be credited, of providing evidence of his physical or medical problems upon return to work. This he failed to do. Claimant's failure not only to provide evidence of his medical disability, but also to stay in touch with Carrier during the period of his absence, is intolerable. It is not normal to expect an employer to accept an absence without either contact or a formal leave for a period of many months, as in this instance, without questioning the ability or interest of an employee to continue in his job. Under all the circumstances herein, Carrier was

correct in its decision to terminate claimant and the claim must be denied.

AWARD

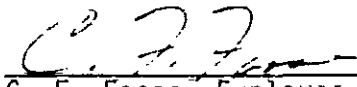
Claim denied.



I. M. Lieberman, Neutral-Chairman



L. C. Scherling, Carrier Member



C. F. Foote, Employed Member

San Francisco, CA

March 27, 1984