

PUBLIC LAW BOARD NO. 2439

Award No. 71

Case No. 71

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

A: "1. That the Carrier violated the provisions of the current agreement when in letter dated March 1, 1982, it advised Track Laborer D. L. Allen to the effect that:

'Evidence adduced at a hearing conducted in the office of Regional M of W Manager Dunsmuir, California, January 29, 1982, established a responsibility for your unauthorized absences and tardiness, which is in violation of Rules 810 and 811 of the General Rules and Regulations
....'

* * *

'For reasons stated, your services with the Southern Pacific Transportation Company are hereby suspended for a period of thirty (30) days, commencing March 8, 1982, through and including April 6, 1982.'

2. That Track Laborer D. L. Allen be compensated any and all time loss suffered during the suspension period and that his personal record be cleared of any and all charges placed thereon."

B: "1. That the Carrier violated the provisions of the current agreement when subsequent to formal hearings conducted January 6, 1983, it suspended Track Laborer D. L. Allen from service for a period of sixty (60) days commencing January 11, 1983, through March 11, 1983, for his alleged violation of Carrier's Rule M, 801, and a portion of the General Notice, said action being excessive, unduly harsh and in abuse of discretion.

2. That Track Laborer D. L. Allen be compensated for all time lost from his assigned position and the charges placed on his personal record now be expunged therefrom."

C: "1. That the Carrier violated the provisions of the current agreement when in letter dated February 15, 1983, it notified Track Laborer D. L. Allen to the effect that

evidence adduced at the formal hearing conducted on January 27, 1983, established his responsibility in connection with his unauthorized absences on August 3, 1982, December 17, 20, 21, 22 and 23, 1982, and thus was in violation of Carrier's Rule 810 and, for reasons thereof, his services with the Carrier were thereby terminated, said action being excessive and in abuse of discretion.

2. That Track Laborer D. L. Allen now be reinstated to his former position with seniority and all other rights restored unimpaired, pay for all time lost therefrom, and that the charges placed on his personal record 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.

This dispute involves three separate claims, each handled by separate investigations, though all claims are related. The record indicates that in the first of the charges claimant was clearly responsible (and admitted it) for being absent without authority on three days and being tardy on an additional three days. Based on that particular series of infractions, he was accorded a suspension of thirty (30) days.

In the second incident, claimant was charged with responsibility for not reporting an alleged personal injury to himself while at work. He did not appear at the hearing at which this matter was investigated. Subsequently, he was found guilty of the charges and suspended for a period of sixty calendar days.

In the third series of circumstances, claimant was charged with being absent without authority on August 3, December 17, 20, 21, 22 and 23, 1982. With respect to this matter, a hearing was held on January 27, 1983, and claimant did not appear at the hearing. He was found guilty of the charges and dismissed.

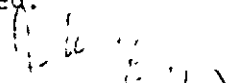
Carrier asserts that its conclusions with respect to the measure of discipline accorded claimant in the three cases was eminently reasonable. He was clearly guilty on all three occasions of the charges. In addition, his past record, prior to these incidents, was atrocious and was introduced into the record. Under all the circumstances, Carrier concludes that it was correct in its ultimate decision to terminate claimant following the previous infractions.


The Organization argues initially that Carrier's various modes of discipline in these three cases were arbitrary and excessive based on the entire record. Furthermore, the Organization maintains that because of claimant's absence at two of the hearings, obviously, charges were never contested appropriately and both hearings should have been postponed. Particularly with respect to the last investigative hearing, the Organization notes that that hearing took place during the period of time that claimant was already on suspension. Furthermore, the Organization notes that claimant had a number of personal problems which, in part at least, accounted for some of his absences.

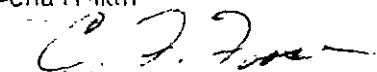
After a thorough review of the transcripts of the investigations in all three of the incidents included in this claim, the Board is of the opinion that there was substantial evidence to support Carrier's conclusion of claimant's guilt. On its face, the three levels of discipline accorded claimant for the infractions involved indicated a progressive and hopefully curative type of discipline. It is apparent that claimant, based on his earlier record, much less the three infractions involved herein, learned little from his past experience and discipline. Under the circumstances, Carrier was eminently justified in its decision to terminate claimant due to his serious infractions and apparent lack of interest in his position. The award must be denied.

AWARD

Claim denied.


I. M. Lieberman, Neutral Chairman


C. L. Scherling, Carrier Member


C. F. Foote, Employee Member

San Francisco, CA
March 27, 1984