

PUBLIC LAW BOARD NO. 2439

Award No. 72
Case No. 72

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the dismissal of Truck Driver David Dominguez was in violation of the current agreement by Carrier failing to accord claimant a fair and impartial hearing, said action being in abuse of discretion and unjust.
2. That claimant now be returned to his former position with the Carrier with seniority and all other rights restored unimpaired and with compensation for all wage loss suffered."

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, a truck driver, was displaced from his position by senior employee on August 25, 1982, due to a reduction in Carrier's forces. Under Rule 13B he had ten calendar days in which to exercise his seniority under those circumstances. No action was taken by claimant during the period in which he had to exercise his seniority and on September 7 his services were terminated for that reason. The claim herein was submitted by the District Chairman for the Organization on June 14, 1983.

The claim herein was filed 9 months after the date of the event on which it was based. Under Rule 44 of the agreement, claims must be presented within sixty days from the date of the occurrence of the event on which the claim is based. Since this claim was filed far beyond the period provided in the agreement, it must be denied as untimely.

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AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



L. C. Scherling, Carrier Member



C. F. Foote, Employee Member

San Francisco, CA
October 3, 1984