

PUBLIC LAW BOARD NO. 2439

Award No. 73
Case No. 73

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 it dismissed Grinder Operator D. L. Roberts from its service based on unproven charges, said action being unduly harsh and in abuse of discretion.
2. That claimant now be reinstated to his former position with the Carrier with all 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 grinder operator, with a seniority date of December 11, 1975, was charged with failing to comply with instructions from his supervisors, abusing a truck, operating a truck in a rough and careless manner and obstructing a track without providing proper flag protection. He was removed from service on February 4, 1983, and received a letter dismissing him from service on approximately April 1, 1983.

From the entire record it is clear that claimant acted in a hostile and aggressive manner with respect to the incidents charged in this case. He refused to perform certain work which was assigned to him by his supervisors on both February 3 and 4, 1983, and finally did perform those functions after argument with his supervisors. There was also substantial evidence to indicate that he operated the vehicle in question in an aggressive and dangerous manner, frightening certain

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other employees who were riding with him. In addition, there is no doubt but that he blocked track in parking the vehicle for purposes of maintenance work near the grinder train. While the Organization denies that the Carrier had sufficient evidence to establish some of the charges against him, the credibility findings of the hearing officer make it apparent that there was indeed significant evidence to support Carrier's charges.

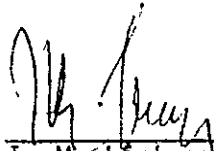
An analysis of the investigation, however, reveals certain anomalies. First, it is clear that the insubordination was of a variety involving argument, rather than refusal in fact to perform the functions. Second, with respect to the damage allegedly attributable to claimant with respect to the vehicle, that evidence is entirely circumstantial. There is no indication that he did, indeed, kick in the doors on the truck as claimed by Carrier. Thus, it must be concluded that there was significant evidence in spite of these two anomalies to establish that claimant was guilty of the charges preferred against him, since he clearly did obstruct the track without providing for proper flag protection (even though he could not do that himself) and, additionally, did drive the truck in a rough and careless manner and generally operated in a hostile and aggressive manner. It is this Board's view, however, that the nature of the abuses attributable to claimant did not warrant in this instance permanent dismissal. That conclusion with respect to the nature of the penalty appears to be an abuse of discretion on the part of Carrier. For that reason, the Board will order claimant's reinstatement with all rights unimpaired but without compensation for time lost. The period out of service will have been considered a disciplinary layoff in this instance. Claimant should also be advised that his reinstatement in this instance must be considered a last opportunity to perform in an acceptable fashion. Further abuses of the rules and conduct such as that in this dispute could result in permanent and unequivocal finality in the dismissal arrangements.

AWARD

Claim sustained in part; claimant will be returned to duty to his former position with all rights unimpaired but without compensation for time lost. The time out of work will be considered to be a disciplinary layoff.

ORDER


Carrier will comply with the award herein within thirty
(30) days from the date hereof.



I. M. Lieberman, Neutral-Chairman



L. C. Scherling, Carrier Member



C. F. Foote, Employee Member

San Francisco, CA

October 3, 1984