

PUBLIC LAW BOARD NO. 2439

Award No. 80

Case No. 80

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the suspension and demotion of Track Foreman H. M. Sanchez was without just and sufficient cause, in extreme abuse of discretion, disproportionate and totally uncalled for.
2. That Foreman H. M. Sanchez be compensated for all wage loss suffered for the period of suspension and, in addition, be compensated for the differential in rates of pay between the position of Laborer and Track Gang Foreman."

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 had been functioning as a Track Foreman during the months of May and June 1983. On July 2, 1983, the District Maintenance of Way Manager inspected the track areas which claimant had been servicing in his function. Following the inspection, claimant was suspended from service and subsequently charged with violation of certain Carrier rules for the following specific alleged infractions:

- "1. Working without flag protection, May 10, 1983 through June 2, 1983.
2. Leaving rails, fouling tracks at various mile post locations.
3. Leaving loose track bolts.
4. Working with expired track lineup, June 2, 1983.

5. Installing defective rails:
 - a. Mile post 394.7, May 26, 1983.
 - b. Mogave Yard, May 28, 1983.
6. Anti-creepers not replaced, Mile post 394.03 and Mile post 394.08.
7. Cutting a track bolt with a friction rail saw."

He was found to be guilty of the charges and suspended for a period of 180 calendar days. In addition, he was disqualified as a Foreman, Assistant Foreman, Truck Driver, Crane Operator and Air Compressor Operator. He was instructed to exercise his seniority as a Laborer upon returning to work.

Carrier contends that the discipline accorded was appropriate in view of the seriousness of the offenses committed. Petitioner, on the other hand, insists that even if claimant were guilty, and he denied guilt on all but two of the charges, the discipline accorded was wholly disproportionate to the type of offenses involved. The Organization is particularly concerned with a lifetime disqualification explicit in the penalty.

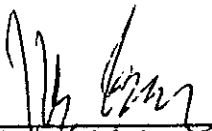
It is this Board's view that claimant was clearly guilty of at least two of the infractions which were important and serious. He may, indeed, have been guilty of several of the other minor infractions as determined by the Hearing Officer. However, the nature of the penalty imposed appears to be totally inappropriate under the circumstances. While Carrier was well within its proper prerogatives in suspending claimant, he should not have been disqualified from all the positions indicated and certainly not indefinitely. It is this Board's view therefore that the penalty imposed was harsh and discriminatory under the circumstances. As a remedy, the Board views the proper disqualification to be that only for Foreman and not for the other positions indicated. Furthermore, claimant should be afforded an opportunity to demonstrate his ability in the future for a Foreman's position, should opportunities arise.

AWARD


Claim sustained in part as indicated in the findings above.

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