

PUBLIC LAW BOARD NO. 2439

Award No. 81  
Case No. 81

PARTIES  
TO  
DISPUTE

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

STATEMENT  
OF CLAIM

- "1. That the Carrier violated the provisions of the current agreement when it failed to properly compensate Messrs. J. Martinez, S. Ysaquirre, and V. Rosas for services rendered on February 16, 1983, when they were instructed by the Carrier to attend a formal investigation.
2. That each claimant now be allowed one (1) day's compensation applicable to the position he held on February 16, 1983, and that each be allowed the applicable mileage allowance for travel and meal allowance for the noon day meal."

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 on December 9, 1982, the three claimants were loading switch ties into a dump truck. In the course of this activity one of the ties slipped off the pile and landed on the foot of Mr. Rosas causing him to sustain an injury. The three men were subsequently charged with being careless and inadequate supervision in the activity on the day in question. They were cited as being in violation of certain Carrier rules. Following a hearing which took place ultimately on February 16, 1983, Rosas was found to be not guilty of any rules violation and the other two employees received letters of reprimand.

It is noted that Rule 45(b) of the agreement requires that an employee be compensated for wage loss sustained in attending a hearing in the event the charges against him are not sustained. It is apparent with respect to Mr. Rosas that

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he was cleared of the charges and should have been compensated for the day of February 16, 1983, when he attended the hearing. With respect to the other two employees involved, there is no rule support for any claim for wages for those employees since they were found guilty of the charges. Furthermore, with respect to all three claimants, there is no rule support for the position that expenses attendant upon being at a hearing be paid. There is no practice or precedent on the property either in support of such a request.


For the reasons indicated therefor, with respect to Mr. Rosas, he shall be compensated for the day's pay which he lost due to the hearing in view of the finding that he was not guilty of the charges. With respect to the other two claimants and the request for expenses, there is no basis for payment and the claims must be denied.


AWARD

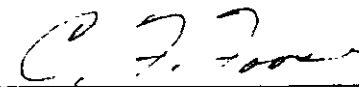
Claim sustained in part; Rosas shall be compensated for wage loss sustained for attending the hearing on February 16, 1983; the remainder of the claim is denied.

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. Foose, Employee Member