

PUBLIC LAW BOARD NO. 2439

Award No. 83
Case No. 83

PARTIES
TO
DISPUTE

Southern Pacific Transportation Company
and
Brotherhood of Maintenance of Way Employees

STATEMENT
OF CLAIM

"That the Carrier's decision to suspend Welder, Mr. A. Santa Cruz, from its service for a period of forty-five (45) days was unduly harsh, in abuse of discretion and in violation of the current agreement.

That Claimant A. Santa Cruz be compensated for all wage loss and his record be cleared of all charges."

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 here, a welder on a welding gang located in Arizona, on April 5, 1984, at 7:30 P.M., informed his immediate supervisor the Welding Foreman that he was tired and unable to continue to work and was returning to his motel for a rest. He had been working at that time since seven that morning and for twenty-six consecutive days without a rest day. Claimant returned to work on Sunday, April 8, 1984, at which time he was removed from service and subsequently, by letter dated April 12, was charged with being absent without authority and insubordination. Following an investigatory hearing which although originally scheduled for April 30, 1984, was scheduled on May 8 in order to allow claimant time to arrange for representation, he was found to be guilty of the charges in his responsibility for failing to comply with the direct order of his supervisor and absenting himself without proper authority. By letter dated May 21, 1984, claimant was thereupon suspended from service for a period of forty-five days, the suspension to commence with the first day he lost from work. He returned to work on May 22, 1984.

Petitioner argues that claimant was in imperative need of rest and was exhausted at the time that he told his supervisor he was leaving work. The entire situation, according to Petitioner, was caused by Carrier arbitrarily changing the assigned hours of the particular gang by forcing the group to work a fourteen-work-day week, thereafter followed by seven days rest. In this instance, the claimant had worked for a total of twenty-six consecutive days with a large percentage of the days of over sixteen hours each. On the day in question he had worked twelve hours. The Organization argues that the penalty assessed was without merit and should be reversed.

Carrier, on the other hand, indicates that it is clear that the record reveals that claimant walked off the job without authority. It is also asserted that the Foreman told the claimant to stay on the job and that he was needed. Carrier argues that it is impossible to permit employees to pick and choose when they will work and at what time they must retire from working. The action of the claimant in this instance in defying the work orders of his Foreman and subsequently absenting himself without authority warranted the discipline assessed.

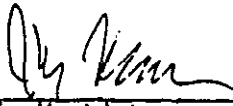
It is the Board's view that claimant clearly violated the rules of Carrier by leaving work without authority on the day in question. However, it is also apparent that the particular circumstances in this situation warranted some action on his part due to his physical exhaustion which is not rebuttable. On balance, although claimant's actions are clearly beyond the pale of reasonable Management prerogative and employee reaction, it is clear that the discipline assessed in this instance was disproportionate to the offense. Under the circumstances of this particular case, therefore, the discipline shall be reduced to a fifteen-day suspension and claimant will be made whole for the difference in the forty-five day to fifteen-day suspension, or paid for thirty days that he was out of work.

AWARD

Claim sustained in part; the penalty shall be reduced to a fifteen-day suspension and claimant made whole for all losses in excess of those days.

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. Foose, Employee Member

San Francisco, California

August **27**, 1985