

PUBLIC LAW BOARD NO. 2439

Award No. 86  
Case No. 86

PARTIES  
TO  
DISPUTE

Southern Pacific Transportation Company  
and  
Brotherhood of Maintenance of Way Employees

STATEMENT  
OF CLAIM

- "1. That the Carrier violated the provisions of the current agreement when it dismissed Mr. D. E. Lakey on April 10, 1984, on the basis of unproven charges, said action being totally in error and in abuse of managerial discretion.
2. That Claimant D. E. Lakey shall now be reinstated to his former position with the Carrier with seniority and all other rights restored unimpaired and compensation for all wage loss resulting from the Carrier's improper act."

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 had been employed by Carrier for approximately ten years. He was charged with being absent without authority on four days in February and March of 1984. Following an investigative hearing, claimant was terminated after being found guilty of the charges.

The investigation record reveals some rather ambiguous and strange testimony with respect to the notification process for employees in claimant's class. However, with respect to claimant it appears that he did, indeed, call Carrier on two occasions of the four with which he was charged with being absent without authority and apparently was unable to call on the other two days. Allegedly his reason for absence was due to dental work which had to be performed. There is question as to whether that work was performed on an emergency basis or on a scheduled basis and, hence, the absentee problem that claimant had is not fully explained by his testimony. It is also clear from the record that

claimant had a very poor prior record with respect to this same type of infraction: he had been absent on twenty-two other occasions under similar circumstances.

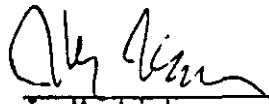
In view of some of the strange aspects of this particular dispute and claimant's record of service, the Board concludes that discharge was not warranted in this particular case. Claimant, however, must understand that in being restored to his position, he must learn to abide by Carrier's rules and future absenteeism or other infractions of a similar nature will not and should not be tolerated by Carrier. Therefore, the conclusion is that claimant shall be reinstated to his former position with all rights unimpaired but without compensation for time lost. It is clear that this will be his last chance to establish a proper record.

AWARD

Claim sustained in part; claimant shall be reinstated to his former position with all rights unimpaired but without compensation for time lost.

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