

PUBLIC LAW BOARD NO. 2439

Award No. 87

Case No. 87

PARTIES
TO
DISPUTE

Southern Pacific Transportation Company
and
Brotherhood of Maintenance of Way Employees

STATEMENT
OF CLAIM

- "1. That the Carrier's decision to suspend Grinder Operator, Mr. D. H. Vanderpool, for a period of thirty (30) calendar days commencing January 15, 1984 through and including February 14, 1984, was without just and sufficient cause, excessive, in abuse of discretion and in violation of the agreement.
2. That Mr. D. H. Vanderpool's record be cleared of all charges and that he be compensated for all wage loss suffered as a result of the violation as described in Paragraph 1 hereof."

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 working as a grinder operator with a welding gang on double track territory. On October 25, 1983, at approximately 2:15 P.M., claimant had been working under the instruction of the lead welder. At that time the track foreman instructed claimant to grind two welds which had just been completed by the gang. Several minutes later the foreman noticed that claimant was not doing the work as instructed and asked him the reason for it. The testimony indicates that claimant told him that he wanted someone to protect him from the trains. The foreman assured the claimant that there were no trains to be in the area until after 4:00 P.M. and that there was adequate protection since the entire gang was working on that particular eastbound rail. Claimant refused to do the work unless he was given protection by someone watching for trains. The foreman then told claimant that if he wasn't going to work, he should go home. The claimant left the worksite at approximately 2:30 P.M.

and went home for the day. Subsequently, following a formal investigation and a charge that claimant had not been following instructions of the supervisor, he was found guilty and awarded a thirty-day suspension for the infraction.

Petitioner insists that claimant was correct in his request for a lookout and no employee should be penalized for desiring to work in the safest possible manner. The Organization maintains that claimant's request for a lookout was reasonable and he acted in good faith in making his request. He should not have been assessed discipline since there was no evidence that he was guilty.

Carrier states that the claimant had been informed that the working conditions were safe since the work was being done under the protective conditions required. In addition, there was a "window" system in effect providing for a period of freedom from operations of trains until the work was completed (4:00 P.M.). Furthermore, the lead welder performed the work which had been asked of claimant in about twenty minutes, finishing the work long before any trains could enter the work area. Carrier maintains that claimant was simply unwilling to take orders from a particular foreman and the discipline was lenient under all the circumstances since he could have been dismissed for the infraction.

It is the Board's view that it is apparent that there was some difficulty between claimant and his supervisor. The fact of the matter was that there were two supervisors working with claimant on the day in question, the lead welder as well as the foreman of the gang. Nevertheless, clearly claimant was guilty of the charges and his refusal to follow the instructions of his foreman under the circumstances cannot be tolerated and should not have been under any circumstances. Thus, the penalty accorded for his guilt of the infraction was not excessive and must not be disturbed. The claim must be denied.

AWARD

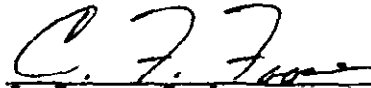
Claim denied.



I. M. Lieberman, Neutral-Chairman



L. C. Scherling, Carrier Member



C. Foote, Employee Member

San Francisco, California

August **27**, 1985