

PUBLIC LAW BOARD NO. 2439

Award No. 89
Case No. 89

PARTIES
TO
DISPUTE

Southern Pacific Transportation Company
and
Brotherhood of Maintenance of Way Employees

STATEMENT
OF CLAIM

- "1. That the dismissal of Mr. J. C. Henshaw was improper, without just and sufficient cause and in violation of the current agreement.
2. That the claimant shall be reinstated with seniority, and all other rights restored unimpaired, his record shall be cleared of all charges levied against him and that he be compensated for all wage loss suffered."

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 claimant entered Carrier's service on June 12, 1972, as a carpenter-helper. In April of 1983 claimant was arrested and jailed for possession of cocaine and marijuana. Subsequently, claimant pleaded guilty in court to the charges and was scheduled for sentencing in July of 1983. Claimant was cited for a formal hearing in connection with the charges involved in his arrest and, following the hearing, claimant was dismissed from Carrier's service for violation of Carrier's Rule "G" with respect to illegal use or possession of drugs and certain other rule violations, including being absent without authority. Following the disciplinary proceeding, claimant entered Carrier's Employee Assistance Program and upon completion of the program it was recommended that he be reinstated on a leniency basis. Carrier did reinstate claimant on a leniency basis on April 4, 1984, with certain conditions, including one that claimant was to abstain from the use of alcohol and narcotics. It was also understood that any evidence that indicated that he had departed from the condition agreed to would result in his removal from service. As

part of the process of reinstatement, claimant was required to pass a medical examination before return to service. The medical examination resulted in a positive drug screen and, hence, claimant was again removed from service on April 11, 1984, for violation of one of the conditions of the reinstatement agreement. The two claims are combined for the purposes of this matter before the Board under Case No. 89.

Petitioner insists that Carrier failed to establish its position warranting the permanent dismissal of claimant in that it refused to provide claimant with a copy of the medical report indicating the drug which he was alleged to have had in his system. In short, according to the Organization, Carrier has declined to offer any substantial evidence to support its position that the urinalysis was a positive one. Therefore, according to the Organization, in view of claimant's ten years of service, he should not have been discharged under the circumstances.

Carrier maintains that its action in removing claimant from service for violation of the conditional reinstatement understanding was entirely proper. Furthermore, according to Carrier, there is no provision in the agreement requiring that any medical tests, such as the urinalysis, be tendered to the employee. In this case, according to Carrier, there was no question but that there was evidence to establish that claimant violated the condition of his reinstatement with respect to absence and the use of drugs. Carrier maintains that the drug found in claimant's system was an amphetamine. In view of the circumstances, Carrier feels that its action was proper and is unwilling to accede to the Organization's request to return claimant to service.

In the Board's view, the claimant in this instance should be given an opportunity to prove without any doubt that he is able to perform adequately without being under the influence of any type of drug or alcohol. Thus, the Board believes that claimant should be required to enter the Employees Assistance Program and, provided that he gets a clean recommendation from that program and its counselor, he then should be returned to his former position with all rights unimpaired but with no compensation for time lost.

AWARD

Claim sustained in part; claimant shall be reinstated to his former position provided that he completes successfully participation in the Employee Assistance Program as indicated above. There shall be no pay for time lost.

ORDER

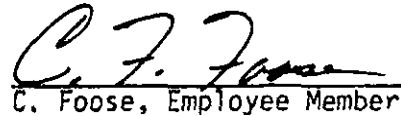
Carrier shall comply with the award herein within thirty (30) days from the date hereof.



I. M. Lieberman, Neutral-Chairman



L. C. Scherling, Carrier Member



C. Foote, Employee Member

San Francisco, California

August **27**, 1985