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PUBLIC LAW BOARD NO. 2439

OFFICE OF GENERAL CHAIRMAN

Award No. 9
Case No. 9

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- 1) That the Carrier violated the provisions of the current Agreement when, as a result of hearing held on March 29, 1978, it assessed Track Laborer D.T. Farrell's personal record with thirty (30) demerits, such action being in abuse of discretion.
- 2) That the Carrier now remove the thirty (30) demerits and clear Claimant's personal record of all charges in connection with said violation."

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 with a seniority date of June 9, 1976 had been injured on August 12, 1976 while on duty. As a result of this injury he was unable to work for a substantial period of time. On January 12, 1978 Claimant received a letter advising him that Carrier had received doctors reports which recommended that Claimant be returned to service with a forty-five day adjustment period and the letter further indicated that Claimant should report to duty no later than January 23, 1978.

On January 21, 1978 Carrier's Division Engineer received a telephone call from Claimant attorney advising him that Claimant had suffered an automobile accident over the past weekend and had injured himself and was unable to come to work as specified. It was understood in this telephone conversation (later confirmed by letter) that Claimant would have until January 30 to report for work. It was also understood that Claimant would present information and evidence that he was under the care of doctors for his

automobile injury and also would indicate when he could be expected to return. Claimant did not return to work and Carrier received no information from the physician. There followed a series of telephone calls with Claimant's attorney and finally a telephone call between Carrier officials and Claimant on February 13. Having no satisfactory response from Claimant, Carrier preceeded to terminate Claimant's employment by letter dated February 14. Subsequently, Claimant requested an investigation which was granted.

Petitioner cites Rule 33 (d) of the Current Agreement which states:

"Sick Leave - (d) Employees on sick leave or with physical disability shall not require written leave of absence, but they may upon their return to service, be required to furnish satisfactory evidence of their sickness or disability."

Petitioner alleges that under the rule indicated above Claimant was not obligated to furnish proof of illness until his return to service. Further, Petitioner states that Carrier was well informed of Claimant's whereabouts and the fact that he had had an automobile accident. Petitioner concludes that Carrier's action in disciplining Claimant under the circumstances was clearly an abuse of discretion.

Carrier takes the position that Claimant was not on sick leave and hence, Rule 33 (d) was not applicable. Claimant had been cleared for service by Carrier's Medical Officer and was in the status of being expected to return to work when the alleged automobile accident took place. Carrier concludes that Claimant was absent without proper authority and was clearly guilty of the charges and should have been disciplined.

The transcript of the investigation reveals that Claimant did not seek medical care until approximately a week and a half after his automobile accident which was a period substantially beyond the date in which he was to return to work. In view of his prior clearance by Carrier's Medical Officer and expected return to work there was no legitimate reason for his having failed to do so. As of the date of the hearing, Claimant had yet to produce any evidence from his own physician as to the nature of his diffi-

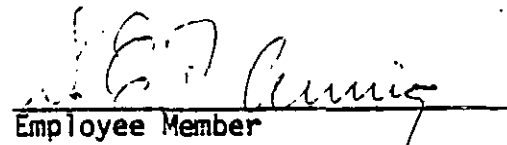
culty or injury from the automobile accident. Carrier was well within its rights to insist on either Claimant reporting for work as recommended by the medical authorities or providing a legitimate reason for not doing so. There is no basis whatever for disturbing the discipline imposed by Carrier in this instance.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman


Carrier Member
Employee Member

San Francisco, California

March 11, 1980