

PUBLIC LAW BOARD 2439

Award No. 91
Case No.91

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company

STATEMENT
OF CLAIM

- "(1) That the Carrier's decision to dismiss Track Laborer Mr. T.L. Heldt was without just and sufficient cause and in violation of the Agreement.
- (2) Claimant shall now be returned to former position with the Carrier, with seniority and all other rights restored unimpaired and compensation for all wage loss suffered."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employee 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 had been employed by this Carrier for some 7 years prior to the incidents involved herein. On November 27, and 28, of 1984, Claimant was absent from his assignment and on both of those days he called in prior to 9 AM to report his impending absence. In both instances, he indicated that he had personal business which would prevent him coming to work.

On November 29, Claimant was also absent from his assignment but did not contact his foreman or a clerk in the office whatsoever.

Following these incidents, Claimant was charged with being absent in violation of Carrier's Rule 810 and the hearing date was established. The Claimant attended the hearing and defended himself, not desiring Union representation. At the hearing Claimant admitted that he had been absent without permission on the days in question and did not indicate any reasons for his absence except for the term "personal business".

The Petitioner indicates that the Claimant had complied with the rules in that he called in prior to his absences on 11-27 and 11-28, and therefore in effect, the discipline was because of his unreported absence of 11-29. For this reason, Petitioner insists that the penalty accorded Claimant was harsh and unjust under all the circumstances. Carrier, on the other hand, indicates that Claimant had a record of absenteeism of which this was merely the culminating incident. Carrier points out that Claimant had been counselled because of absenteeism and noncompliance with Rule 810 on numerous occasions between 1978 and 1984. In addition, he had received 3½ days of suspension in 1983 and 60 demerits in October of 1984 for the same violation. Further, in November of 1984, Claimant was suspended for a period of 10 days for violation of the same rule. He returned to service on November 20th, from his suspension, and it was only 7 days later that he continued with his absenteeism practice according to Carrier.

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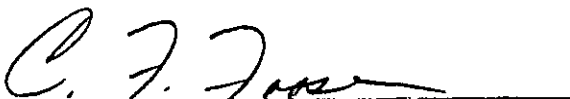
As the Board views it, Claimant was accorded a fair and impartial trial and the hearing indicated that his guilt of the particular charges was clear and undenied. In view of Claimant's past record, and the fact that he appeared to have a record of chronic absenteeism, Carrier's decision to terminate him seems appropriate under the circumstances. It clearly cannot be characterized as harsh, arbitrary or an abuse of discretion. The claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman



C.F. Foose, Employee Member



H. Moles, Carrier Member

San Francisco, California

January 26, 1987