

PUBLIC LAW BOARD NO. 2439

Award No. 92  
Case No. 92

PARTIES  
TO  
DISPUTE

Southern Pacific Transportation Company  
and  
Brotherhood of Maintenance of Way Employees

STATEMENT  
OF CLAIM

- "1. That the dismissal of Ballast Regulator Operator, Mr. A. Terry, was without just and sufficient cause and in violation of the current agreement, said action being unduly harsh and in abuse of managerial discretion.
2. As a consequence of the violation referred to above, the Carrier shall now be required to reinstate claimant to his former position with seniority and all other rights restored unimpaired and with compensation beginning December 30, 1983 forward."

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, a ballast tamper operator on an extra gang, was employed by Carrier on July 10, 1963. In 1979 he had a work-related injury to his back. This injury left him partially disabled and he returned to his assignment with certain physical limitations. On September 8, 1983, claimant alleged that he had been working to assist the track liner operator and injured his back or caused damage to the earlier injury. On the following morning, September 9, claimant reported to work and reported the injury to his foreman and then went to see his doctor. He filed an accident report on September 12, 1983, in which he alleged that he injured or re-injured his back while working on September 8, 1983.

Claimant was placed in the hospital for more extensive care and therapy. One month later claimant was charged with possible violation of Carrier's rules

in not being honest in his accident report. He was subsequently dismissed following an investigation for dishonesty.

The transcript of the investigation reveals that claimant's foreman testified unequivocally that claimant was assigned to ride with him in his truck on September 8, 1983, and that claimant was with him all that day and did no work as a laborer with any other members of the gang. Certain other employees corroborated the fact that they did not see claimant doing any physical labor on September 8. One employee, the track liner operator, testified that claimant had helped him for a period of approximately three hours on September 8, 1983. The conflict of testimony was resolved by the Hearing Officer who credited the testimony of the foreman and the other employees, but not that of the single operator and claimant. Based on this record, therefore, Carrier determined that claimant was guilty of misrepresentation and dishonesty in his accident report and should be dismissed.

The fundamental question in this matter is whether indeed Carrier was correct in determining that claimant was guilty of the charges. The record does not reveal any medical evidence whatever to establish the basis for the claimant's alleged injury or re-injury of his back. Furthermore, the question of credibility is not before this Board and has been resolved by the Hearing Officer. Based on these two facts alone it is evident that claimant was guilty of dishonesty in completing his accident report. There is no basis for the assumption that his injury was caused by his working on September 8. On the contrary, the evidence, based on the credibility determination, is quite the opposite. For this reason, Carrier was quite correct in its determination that since claimant was dishonest, he should be dismissed. The Board concurs in this conclusion.

#### AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



L. C. Scherling, Carrier Member



C. Foose, Employee Member

San Francisco, California

August **27**, 1985