

PUBLIC LAW BOARD NO. 2439

Award No. 95  
Case No. 95

PARTIES  
TO  
DISPUTE

Southern Pacific Transportation Company  
and  
Brotherhood of Maintenance of Way Employees

STATEMENT  
OF CLAIM

- "1. That the Carrier violated the provisions of the current agreement when it dismissed Mr. J. W. Ramsey, III, from its service without just and sufficient cause, said action being unduly harsh and in abuse of discretion.
2. That Mr. Ramsey be reinstated to his former position with the Carrier with seniority, and all other rights restored unimpaired, with compensation for all wage loss suffered and that his record be cleared of all charges."

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 was a water service mechanic who was employed by Carrier on June 25, 1973. Based on an incident which occurred on August 23, 1984, claimant was charged with engaging in an altercation with a fellow employee in violation of Carrier's Rules 801 and 802. Following an investigation held on August 29, 1984, both participants in the affair were terminated. Approximately six weeks later the other employee was reinstated to service; claimant was not.

Carrier bases its actions on the serious nature of the affair and its finding that the claimant was the instigator of the fracas. Carrier also indicates that the claimant's prior disciplinary record, including two prior cases before this Board, must be considered in the discipline imposed. The Organization, on the other hand, insists that although an altercation took place,

there was no testimony to establish that the claimant was responsible for instigating the altercation or initiating anything. Further, petitioner argues that both parties should share the responsibility for the incident and should have received the same quantum of discipline.

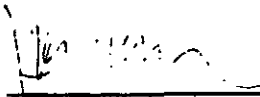
In the Board's view, after a careful evaluation of the evidence, although claimant may have been responsible for the initial verbal aggression, the record is far from clear that he was the physical aggressor. It is apparent that both employees had significant responsibility for the entire incident. There appears to be no rational explanation for the disparate treatment accorded the two employees. Even though the hearing officer found that claimant was the initiator of the altercation, this does not explain the extent of the disparity in treatment. Therefore, recognizing claimant's culpability as determined by the hearing officer, he must be reinstated to his former position. His past infractions, unrelated in type to this matter, do not warrant the ultimate penalty of permanent dismissal. However, it must be clearly understood that claimant must adhere to the carrier's rules in order to retain his position. This is his last opportunity to do so. Accordingly, the claim is sustained in part.

#### AWARD

Claimant shall be reinstated to his former position but without compensation for time lost.

#### ORDER

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

  
I. M. Lieberman, Neutral-Chairman

  
C. Foose, Employee Member

  
L. Scherling, Carrier Member

San Francisco, California  
January 31, 1986