

PUBLIC LAW BOARD NO. 2439

Award No. 98
Case No. 98

PARTIES
TO
DISPUTE

Southern Pacific Transportation Company
and
Brotherhood of Maintenance of Way Employees

STATEMENT
OF CLAIM

- "1. That the Carrier's decision to dismiss Lead Welder Julio A. Espana was in violation of the agreement, said action being without just and sufficient cause and in abuse of discretion.
2. That the Carrier will now be directed to remove all charges from Mr. Espana's record and compensate him for all wage loss suffered commencing August 4, 1984 and until he was returned to service the latter part of February, 1985."

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 dismissed from service for being absent without authority from 9:30 P. M. to 12:30 A.M. on July 6, 1984. He was reinstated to service in February of 1985 without prejudice to his claim for compensation, subject to passing the normal return-to-work physical examination.

In this dispute claimant alleged that after reporting for work at the usual time on July 6, 1984, he had a flat tire on the way to his sister's house for lunch at about 9:30 P.M. that night. He had another member of his gang with him. He claims that he had no spare tire and had to get the tire repaired in order to return to work. He called his supervisor at approximately 10:15 P.M. with the information concerning his lateness and absence. The foreman asked him to report when the tire was repaired; he did not do so. The gang worked until 2:30 A.M. Carrier argues that claimant had ample opportunity to return to work had he so desired. The Organization notes that the other employee had

no discipline assessed against him and, furthermore, that the circumstances of the flat tire were beyond the claimant's control in this case.

In the Board's view, claimant had some culpability for the infraction charged by the Carrier. He should have reported to work, as late as it might have been, as instructed by his foreman, but did not do so. However, the Board also notes that the extent of the discipline in this case, nine months out of service, is clearly excessive. It is the Board's view, therefore, that the claimant should be entitled to five months' pay as compensation for the unwarranted and excessive measure of discipline imposed by Carrier.

AWARD

Claim sustained in part; claimant shall receive five months' pay for the arbitrary and excessive discipline imposed.

ORDER

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



I. M. Lieberman, Neutral-Chairman


C. Foote, Employee Member
L. Scherling, Carrier Member

San Francisco, California
January 31, 1986