

PUBLIC LAW BOARD NO. 3000

Award No. 1
Case No. 1

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE The Western Pacific Railroad Company

STATEMENT
OF CLAIM

- "1. The Carrier violated the provisions of the Current Agreement when on October 27, 1980 it dismissed Track Foreman Mr. H.E. Gramps from its service on charges not sustained by the hearing record, said action being capricious, in abuse of discretion and unduly harsh.
2. That Claimant be reinstated to the service of the Carrier with seniority and all other rights restored unimpaired, and that he be compensated for all time lost, including October 27, 1980, and that his record be cleared of all charges arising from the investigation."

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 herein was hired by Carrier in 1955 and promoted to Foreman in 1969. His record contains no indication of prior discipline. On October 2, 1980 Carrier addressed a letter to Claimant establishing a formal investigation and charging him with: "1) Your alleged sale of ties and ties butts; 2) Your alleged possession of and consumption of beer during working hours; 3) Your alleged use of Company gas in your private vehicle."

Following the investigation Claimant was found guilty of the three charges and was discharged.

Petitioner first alleges that the charges were deficient in that no specific dates

were included in those charges thus hampering the defense. In addition, it is argued that the testimony adduced at the hearing was insufficient to sustain Carrier's burden of proof with respect to substantial evidence in support of its conclusion. Specifically, in the latter context, the Organization insists that the testimony concerning the sale of ties was flimsy and not credible. Further, it is contended that the evidence concerning the misuse of Company owned gasoline is even less convincing. The Organization also contends that Carrier never presented any proof that gasoline was missing. With respect to the consumption of beer, Petitioner contends further that Carrier was the owner of a refrigerator in the Tool House on Carrier property and that the consumption of beer was after working hours and no one was intoxicated. In addition, the Organization points out that Carrier's prime witnesses, three in number, consisted of two new members of the gang with one month and four months service and one employee with a years service.

Carrier argues that Claimant was adequately appraised of the nature of the charges and further, that he requested no additional time to prepare for the investigation. Nor was there any comment made at the time of the hearing where either Claimant or his representative with respect to the charges. Carrier further states that the hearing fully demonstrated Claimant's guilt with respect to the three elements in the charge and that the discipline was fully warranted.

A review of the investigation reveals that Claimant mounted a vigorous defense and did not request additional time for preparation. For that reason, Petitioner's procedural arguments must be rejected since it is evident that he was adequately informed of the elements of the charge and was able to prepare a defense based on the information.

With respect to the three basic elements in the charge against him, Claimant denied any responsibility. Obviously the hearing officer (whose responsibility it is) credited the testimony of the Carrier witnesses over that of Claimant. With that

basic assumption, it is clear that there was evidence to support Carrier's conclusion of Claimant's guilt. It must be noted, however, that the evidence with respect to Claimant's alleged misuse of Company gasoline is far from convincing. Nevertheless, the Board concludes that Carrier had sufficient support in the record to determine that Claimant was guilty on at least two of the charges against him.

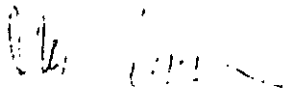
Concerning the penalty imposed in this case, the Organization argues that it was both harsh and excessive in view of Claimant's long service and unblemished record. The Board is inclined to agree. However, the Board also notes that the conduct involved herein, particularly on the part of a Foreman, is inexcusable and cannot be condoned. While the Board concludes that Claimant should be reinstated to his former position, it is also must admonish Claimant that his conduct was improper and extremely serious; in fact, any repetition of such conduct could result in immediate and final discipline.

AWARD


Claimant will be reinstated to his former position with seniority and all other rights unimpaired; he will not be reimbursed for time lost and his period out of service will be considered a disciplinary lay-off.

ORDER


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



I.M. Lieberman, Neutral-Chairman



S.E. Fleming, Employee Member



L.A. Lambert, Carrier Member

January 26, 1982
San Francisco, CA