

PUBLIC LAW BOARD NO. 4373

PARTIES	SOUTHERN PACIFIC TRANSPORTATION COMPANY )	
	(EASTERN LINES)	
TO	AND	AWARD NO. 21
DISPUTE	BROTHERHOOD OF MAINTENANCE OF WAY )	CASE NO. 23
	EMPLOYEES	

STATEMENT OF CLAIM:

1. Carrier violated the effective agreement when San Antonio Division Track Foreman V. M. Munoz was unjustly dismissed from service.
2. Claimant Munoz shall now be paid for all time lost commencing November 17, 1987, and on a continuing basis until such time he is returned to duty with all seniority rights, vacation rights and any other rights accruing to him unimpaired and the charge letter be removed from his personal record.

HISTORY OF DISPUTE:

On November 16, 1987, it came to the Carrier's attention that Claimant had sold or bartered used railroad ties to various individuals for money and goods during the month of August, 1987. When confronted, Claimant admitted that he had sold the used ties and offered to make restitution. By letter dated November 18, 1987, Claimant was charged with violation of Rule 607 and investigation was set for December 1, 1987. At the request of the Organization, the investigation was postponed until December 9, 1987, at which time the investigation was held and concluded. During the investigation, Claimant denied that he ever sold used ties and alleged that he was under stress when he signed a written statement regarding his involvement in selling the ties. By letter dated December 11, 1987, Claimant was advised that he was found in violation of Rule 607 as charged and that he was dismissed from service.

The Organization grieved the discipline. As the dispute remains unresolved, it is before this Board for final and binding determination.

FINDINGS:

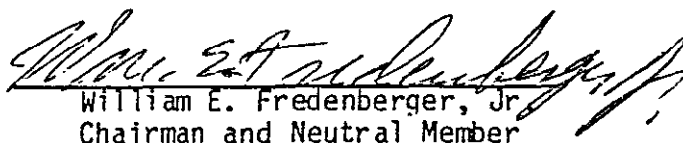
The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act, as amended, 45 U.S.C. §§151 et seq. The Board also finds it has jurisdiction to decide the dispute in this case. The Board further finds that the parties to the dispute, including Claimant, were given due notice of the hearing in this case.

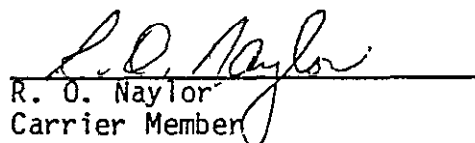
We are satisfied that substantial evidence supports the Carrier's conclusion that Claimant had sold and bartered the used ties in violation of Rule 607. This Board cannot accept Claimant's contention that he signed the written statement admitting to such only because he was under stress.

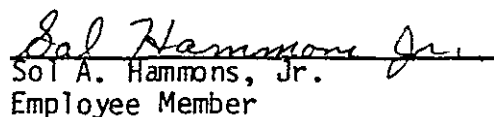
Under the circumstances in this case, permanent dismissal was completely justified.

AWARD

Claim denied.

  
William E. Fredenberger, Jr.  
Chairman and Neutral Member

  
R. O. Naylor  
Carrier Member

  
Sol A. Hammons, Jr.  
Employee Member

Dated: Feb. 26, 1990