

PUBLIC LAW BOARD NO. 1795

Award No. 22
Case No. 22

PARTIES Southern Pacific Transportation Company (Pacific Lines)
TO and
DISPUTE Brotherhood of Maintenance of Way Employees

STATEMENT "1. That the Carrier violated the provisions of the Agreement when, as the
OF CLAIM result of a former hearing held on June 15, 1977, it suspended Track Laborer M.L. Sanchez, for a period of thirty (30) days on charges not sustained by the hearing record, said action being in abuse of discretion.
2. That the Carrier now compensate Claimant for all wage loss suffered and 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.

The dispute herein had its genesis in an altercation between the foreman of the gang on which Claimant was working and Claimant's son who was also a member of the same gang. The record indicates that Claimant was summoned to a hearing on the basis of the following charge:

"....your alleged violation of that portion of Rule M-801 and Rule M-802 of the Rules and Regulations for the Maintenance of Way and Structures, Southern Pacific Transportation Company that reads:

M-801 "Employees will not be retained in the service who are...otherwise
....."

Any action of hostility....is sufficient cause for dismissal...."

M-802 "Employees must not enter into the altercation..."

When on June 1, 1977 at MP-405.3 on the Lone Pine Branch at approximately 2:00 P.M. you allegedly struck your Extra Gang 31 Foreman, J. R. Rogers in the back with a pair of rail tongs."

After careful consideration it is this Board's view that the penalty assessed in this particular instance was severe and improperly harsh. Although Carrier was correct in not condoning Claimant's use of a tool in striking another employee it did not recognize in our judgment, sufficiently, the mitigating circumstances involved. Therefore, we shall change the penalty from a thirty day suspension to a five day suspension and Claimant shall be made whole for the difference.

AWARD

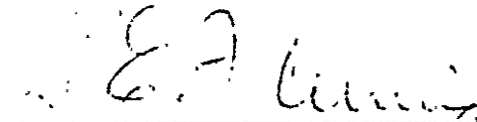
Claim sustained in part as indicated above.

ORDER

Carrier shall comply with the Award herein within thirty (30) days from the date thereof.



I.M. Lieberman, Neutral Member



S.E. Fleming, Employee Member



L.C. Scherling, Carrier Member

San Francisco, CA
June 27, 1979