

PUBLIC LAW BOARD 2439

Award No. 106
Case No.106

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company

STATEMENT
OF CLAIM

- "(1) That the Carrier's decision to dismiss track laborer Pedro G. Saavedra was in violation of the provisions of the current Agreement and in abuse of discretion.
- (2) The Carrier will now be required to return Mr. Saavedra to his former position with seniority and all other rights restored unimpaired and compensation for all wage loss suffered.

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employee 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 record indicates that the Claimant, who had been employed with Carrier for some 30 years sustained an injury while on duty on July 7, 1983. Following a week of off-work and light duty status, Claimant while in the company of the Road Master, was examined by a Carrier physician on September 19, 1983. He was thereafter unable to perform any duties in his former capacity as a track laborer. Carrier indicated that it attempted to contact Claimant thereafter to no avail. There

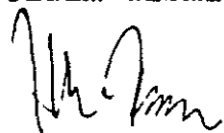
was no communication with him whatsoever. He was charged with unauthorized absence from October 8, 1983, to January 31, 1984, and sent a termination letter dated January 31, 1984.

Following a hearing which had been requested by Claimant, Carrier indicated that there was no evidence introduced into the record justifying Claimant's absence from October 8, 1983 through January 31, 1984. Therefore Carrier concluded that he would remain in the dismissal status.

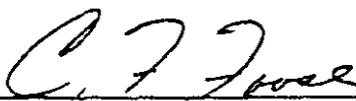
The record indicates that Claimant had brought suit against Carrier due to the injuries he had sustained in July which were settled in full on September 18, 1985. In that settlement agreement, Claimant agreed that the sum paid to him (\$90,000) would among other things preclude him from ever attempting again to return to duty in any capacity and that agreement should constitute and be treated as his resignation. Based on that document it is clear that the current dispute has been rendered moot by the subsequent settlement agreement between Carrier and Claimant and therefore must be dismissed.

AWARD

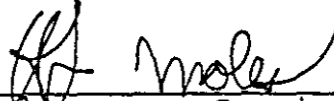
Claim dismissed.



I.M. Lieberman, Neutral-Chairman



C.F. Foose, Employee Member



H. Moles, Carrier Member

San Francisco, California

January 26, 1987