

## PUBLIC LAW BOARD NO. 2439

Award No. 110

Case No. 110

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

STATEMENT "1. That the Carrier's decision to suspend Truck Driver  
OF CLAIM: A. W. Nunn for a period of ninety (90) days be-  
ginning March 12, 1986 through and including June  
9, 1986 was without just and sufficient cause,  
based on unproven charges and in violation of the  
Agreement.

2. That the Carrier now be required to compensate  
Claimant Nunn for all wage loss suffered and clear  
his record 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.

On January 5, 1986, Claimant was working his assignment as a Truck Driver. In the course of turning his vehicle, it became stuck in the mud and it was necessary for another vehicle to pull it out of the mud. Nothing further occurred until February 13, 1986 at which time an Assistant Roadmaster noticed that the grill on the particular vehicle involved in the earlier incident was cracked. Upon questioning by the Road Master, Claimant

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indicated that the grill must have been cracked on January 5 when it was stuck in the mud. However, he had not prepared the required accident report form (Form 2611). He was subsequently charged with violating Carrier's rules by not reporting the accident and after an investigative hearing was found to be guilty of that charge. He was assessed a ninety day suspension for the infraction.

Petitioner insists that there is no evidence to prove when the damage to the vehicle occurred, where it occurred or who was driving it at the time when it occurred. Furthermore the Organization argues that other employees drive the truck in addition to Claimant. Carrier, on the other hand, indicates that there is no doubt but that Claimant indicated that there had been a problem on January 5 and he assumed that the damage to the vehicle had occurred on that date when interrogated by the Assistant Roadmaster. In this instance, he failed to fill out an accident report until some forty-four days following the incident. He was well aware of the necessity for filling out such reports having done so on previous occasions.

The Board upon review of the record believes that sufficient evidence was adduced at the hearing to indicate that Claimant indeed failed to timely file the accident report. Although there is no clarity as to how the accident and damage occurred, the

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fact is that Claimant was the driver during the incident on January 5 and believed that that probably was the cause of the damage to the vehicle. However, as the Board views it, a ninety day suspension was excessive for the particular type of infraction regardless of Claimant's past record. Therefore, the penalty shall be reduced to a thirty day suspension and Claimant shall be made whole for the difference.

AWARD

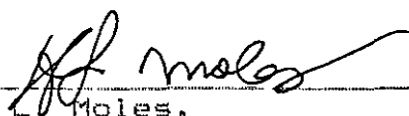
Claim sustained in part. The penalty shall be reduced to a thirty (30) day suspension and Claimant shall be made whole for all losses sustained in excess of that amount.

ORDER

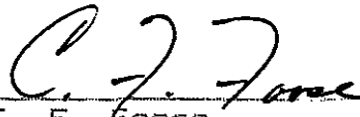
Carrier will comply with the award herein within thirty (30) days from the date hereof.



I. M. Lieberman, Neutral-Chairman



H. L. Moles,  
Carrier Member.



C. F. Foote,  
Employee Member

San Francisco, California

May 3, 1988

June 3