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money. Following an investigative hearing held on September 5, 1985 Claimant was dismissed from service having been found guilty of the charges.

Carrier insists that the investigation indicated that Claimant had sold without authority at least 200 of Carrier-owned scrap ties to an individual and kept the money (\$200) from that sale. Carrier argues that this action on the part of Claimant was in violation of Rule 801 dealing with dishonesty and Rule 806 which specifies that property of the company must not be sold or disposed of in any way except by proper authorities. In this instance, according to Carrier, there is no doubt but that Claimant sold the ties in question to an outside contractor, a Mr. Chacon, and apparently kept \$200 for himself. In addition, Carrier notes, that keeping cash from sales of this type is entirely in violation of company rules and practices. Carrier maintains that, with Claimant a Manager occupying a position of responsibility, the betrayal of trust in this instance was totally unacceptable.

Petitioner argues that the record is clear in that Claimant had been instructed to sell the ties by his superior and thus did not do anything without proper authority. In addition, according to Petitioner, there is no substantiation that Claimant kept monies which were paid to him by the outside contractor but, on the

contrary, issued receipts to the outside contractor (apparently in triplicate) which covered the transaction. Therefore the Organization argues Claimant was not guilty of any of the violations alleged by Carrier and should not have been disciplined.

A review of the record of this matter indicates that it is apparent that Claimant indeed was given authority and instructions to sell the used ties. It is evident that he did sell the ties to a Mr. Chacon but in the course of the transaction did a number of things which were clearly mistakes in judgment. For example, he issued a written receipt for payment for 200 of the ties when in fact he had not yet received the money. Secondly, he apparently did indeed accept cash in payment for part of the ties which he indicated was a deposit since the outside contractor at the time had neither a money order nor a check. This was in violation of Company practice and policy. Further, apparently the mistakes were compounded when receipts were issued to the outside contractor by both Claimant and his clerk erroneously. Thus, there were three receipts issued for the same transaction.

As the Board views it, in the course of this rather complicated series of actions, Claimant was not guilty of selling company property without authority. He was specifically authorized by his

superior to dispose of the particular ties. Concerning the transactions themselves, Claimant used extremely poor judgment in the course of selling the ties to Mr. Chacon. He accepted cash, he gave a receipt without having received monies and, in addition, there was a duplication of receipts subsequently. There is no clear cut evidence to indicate that Claimant was guilty of accepting money personally for sale of company property. For these reasons, as the Board views it, the penalty of dismissal was arbitrary and far in excess of that required for Claimant's mistake in judgment. While Carrier has the right to demote Claimant from his position as a manager and officer, Carrier did not, in the Board's view, properly discipline him by dismissal from his position as Track Foreman. For that reason the Board will order his reinstatement as Track Foreman with all rights, including seniority, unimpaired, but without compensation for time lost as a result of his mistakes.

AWARD

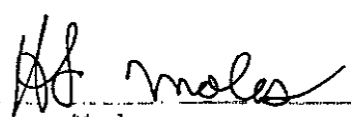
Claimant shall be restored to his position as Track Foreman with all rights unimpaired, but will not receive pay for time lost which will serve as a penalty for the infractions involved.

ORDER

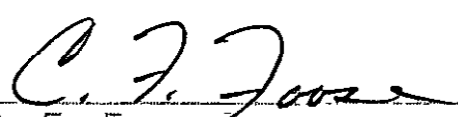
Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I. M. Lieberman, Neutral-Chairman



H. L. Moles.
Carrier Member



C. F. Foose.
Employee Member

San Francisco, California

May 13, 1988

June 13