

PUBLIC LAW BOARD NO. 2439

Award No. 117

Case No. 117

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

STATEMENT "1. That the Carrier violated the provisions of the
OF CLAIM: current Agreement when in letter dated April 8,
1986 it dismissed Track Welder Mr. W. E.
Spradlin, Jr. from its service on the basis of
unproven charges said action being in abuse of
discretion.

2. Carrier shall now exonerate Mr. Spradlin of all charges and reinstate him to his former position with the Carrier with seniority and all other rights restored unimpaired and be compensated for all wage loss suffered.

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.

Claimant had been employed by Carrier in 1978 as a Carman and subsequently secured employment in the welding subdepartment in November of 1984. He was charged with selling used railroad ties without authority in 1985 and after an investigation held on April 4, 1985 was found to be guilty of selling this company

material without authority, keeping the money and was therefore dismissed. The evidence at the hearing indicates that Claimant sold 40 ties in December of 1985 and kept the money in violation of Carrier's rules.

An analysis of the record of this dispute reveals a confused state of the facts. There is no disagreement but that the used railroad ties in question were removed from the property of the Carrier and with the assistance and indeed by Claimant in some cases. The issue in fact is whether Claimant had permission and approval from Roadmaster Mahon for the removal of those ties. The record of the dispute is confused to put it mildly. The story of the removal of the ties involves the trade of a quarterhorse foal, a new infant, a girlfriend and back payment for child support. The interlocking of these various factors apparently caused Claimant to deliver ties to a ranch in exchange for the quarterhorse foal which had been purchased by Mr. Mahon, the Roadmaster, as well as by apparently Claimant's girlfriend (the mother of new infant). There is no doubt in the testimony but that the Roadmaster had authority to dispose of the used ties up to a point in the course of this entire transaction. The question is when and whether the Roadmaster informed Claimant that he no longer had authority to dispose of the ties and whether indeed

Claimant disposed of an additional number of ties (40) subsequent to being informed by Mr. Mahon that he should not do so.

Unraveling the skein of these transactions is most difficult. The confusion that this Board feels apparently was shared by both Claimant and Carrier. At best, Carrier's position in this matter in the course of the entire investigation and previous period can be termed "ambiguous." It is the Board's belief that the instructions to Claimant by the Roadmaster were vague and of an indefinite variety with respect to date. It is also apparent that Claimant was badly in need of money for child support at the time. The conclusion reached by the Board is that the penalty of dismissal was inappropriate in this case. Claimant was perhaps guilty of some misunderstanding and perhaps willful misconduct in the course of a loose Carrier procedure for disposing of old railroad ties. For the reasons indicated, it is believed that a more appropriate penalty should have been a long term suspension at most. Therefore, Claimant shall be reinstated to his former position with all rights unimpaired but without compensation for time lost which shall constitute the penalty for his infraction.

AWARD

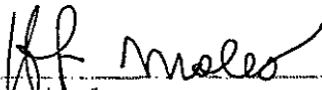
Claim sustained in part: Claimant shall be restored to his former position with all rights unimpaired but without compensation for time lost. The period out of work shall constitute a disciplinary suspension.

ORDER

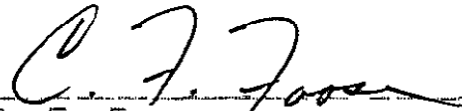
Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I. M. Lieberman, Neutral-Chairman



H. L. Moles,
Carrier Member



C. F. Foote,
Employee Member

San Francisco, California

May . 1988

June 13