

PUBLIC LAW BOARD NO. 2439

Award No. 118

Case No. 118

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

STATEMENT OF CLAIM: "1. That the Carrier violated the provisions of the current Agreement when it dismissed Mr. J. T. Rufus on September 20, 1985 on the basis of unproven charges, said action being totally in error and an abuse of managerial discretion.

2. That Claimant J. T. Rufus shall now be reinstated to his former position with the Carrier with seniority and all other rights restored unimpaired and compensated for all wage loss resulting from Carrier's improper act. "

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 since 1976. He had been dismissed by Carrier and as a result of Award No. 96 of this Board he was reinstated to his former position by letter dated August 23, 1985. Attempts to deliver that letter by certified mail were unsuccessful. The letter was ultimately returned to the Carrier on September 13, 1985. Subsequently, by letter dated

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September 20, 1985 Claimant was notified that he had been absent from work since August 28 without proper authority and was therefore being terminated. That letter also stated that he could request an investigation under Rule 45 of the current Agreement within 30 days. The letter dated September 20 was returned signed by an individual who is unknown to Claimant. At the request of the Organization, an investigation was scheduled for October 11, 1985 and notice to be present at the hearing was mailed to Claimant by certified mail dated September 30, 1985 and again the letter was returned unclaimed. The hearing was conducted as scheduled on October 11 without Claimant being present. As a result of that hearing, Carrier sustained its prior decision to terminate Claimant for his lack of attendance as required (Rule A 10).

Claimant has not been heard from by Carrier since 1985. There is no question but that he failed to tender his proper current address to Carrier and all efforts to contact him have been unsuccessful. There is no basis for sustaining the claim in this matter and it must be denied.

AWARD

Claim denied.

I. M. Lieberman

I. M. Lieberman, Neutral-Chairman

H. L. Moles

H. L. Moles,
Carrier Member

C. F. Foose

C. F. Foose,
Employee Member

San Francisco, California

~~May~~ , 1988

June 13