PUBLIC LAW BOARD NO. 2439

Award No. 123
Case No. 123

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employes
and
Southern Pacific Transportation Co. (Western Lines)

STATEMENT OF CLAIM:

"1. That the Carrier violated the provisions of the current Agreement when, in a letter dated December 3, 1985, it dismissed Track Laborer F. M. Fussell from its service on the basis of unproven charges, said action being excessive, unduly harsh and in abuse of discretion.

2. Carrier shall now exonerate Mr. Fussell of all charges and reinstate him to his former position with the Carrier with seniority and all other rights restored unimpaired compensation 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 1976. In the course of a reinstatement from a prior dismissal, Claimant was directed to take a reinstatement physical examination on October 18, 1985. In that examination, it was determined that he tested positive for the presence of marijuana. Subsequently, by letter dated October 29, 1985, Claimant was charged with violation of Rule G and an

investigation scheduled for November 7, 1985. As a result of that investigation, it was determined by Carrier that he had violated Rule G, due to the use of marijuana, and he was dismissed from service.

This case is totally analogous to that dealt with by the Board in Award No. 122. As in that case, Claimant herein alleged that he had been subjected to a passive inhalation situation. Here, as in the previous case, Carrier noted that the standards had been set, deliberately, quite high, so that passive inhalation could not have registered in terms of a screening test. Additionally, it was determined that Claimant's testimony was not to be credited with respect to his non-use of marijuana. Petitioner alleges that, in the course of the particular examination, Claimant was not yet an employee of Carrier's since he was in a dismissed status and, therefore, Rule G was not applicable. The Board, as it held in the prior case, does not concur in this analysis. It is apparent that Claimant was required to pass a pre-employment physical examination in order to return to work. He failed that examination in that he was found to have been exposed to marijuana. That failure and the implications of it are aptly covered by Carrier's Rule G and the conclusion reached by Carrier was justified. The claim must be denied

AWARD

Claim denied.

I. M. Lieberman, Neutral-Chairman

R. J. Stuart, Carrier Member

C. F. Foose, Employee Member

San Francisco, California
September 15, 1988