

PUBLIC LAW ROAD NO. 2439

Award No. 128

Case No. 128

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

STATEMENT .. "1. That the Carrier violated the provisions of  
OF CLAIM: .. the current Agreement when it dismissed  
Machine Operator C. L. Turks 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. Turks of all  
charges and reinstate him to his former  
position with the Carrier with seniority and  
all other rights restored unimpaired and  
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.

The record indicates that, on April 24, 1986, Claimant telephoned his Roadmaster and requested a leave of absence for eight days. The leave request was refused. Nevertheless, Claimant was absent from April 25 through April 30, 1986. Following that absence, Carrier informed him that he had been terminated for violation of Rule M-810 of the Rules and Regulations for the Maintenance of Way and Structures Department. That Rule specifies that employees

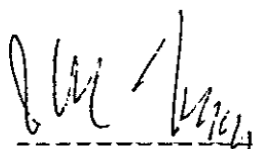
must not absent themselves from their employment, without proper authority, and continued failure to protect their employment shall be sufficient cause for dismissal of employees. Following an investigation at which time Carrier discovered that the absence in this instance was caused by incarceration, Carrier believed that the dismissal was warranted by the evidence and affirmed its prior decision.

Petitioner argues that the offense with which Claimant was charged was insufficient to warrant dismissal. The Organization argues that discipline should be corrective in nature and not punitive, as was the case in this matter. Carrier indicated that he had no notion of the reason why the leave of absence was requested in the first place, and when it found, at a later date, that incarceration was the cause of absence, it could do nothing but to reaffirm its earlier decision. Furthermore, it is apparent, according to the Carrier, that Claimant, in his jail term, was wholly responsible for his predicament.

The Board finds that Claimant admitted that he was absent from Carrier's service, without proper authority, due to being in jail for a period of five days. It is clear that his responsibility for being absent without authority violated Carrier's rules and Carrier appropriately found him to be guilty of the charges. The claim cannot be sustained.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



R. J. Stuart, Carrier Member



C. F. Foote, Employee Member

San Francisco, California  
September 15, 1988