

## PUBLIC LAW BOARD NO. 2439

Award No. 135  
Case No. 135

PARTIES . Brotherhood of Maintenance of Way Employees  
TO . and  
DISPUTE: . Southern Pacific Transportation Company

STATEMENT  
OF CLAIM:

"1. That the Carrier violated the current Agreement when it dismissed Track Laborer R. P. Binder, said action being excessive, unduly harsh and in abuse of discretion.

2. That the Carrier reinstate Claimant with seniority and all other rights restored unimpaired with pay for all loss of earnings suffered and his record cleared of all charges."

## 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.

On July 22, 1986, while working as a Track Laborer, Claimant allegedly injured his right leg on a piece of ballast while

crossing the track. There were no witnesses to this incident. In spite of his pain, Claimant continued to work for the remainder of the day. On the following morning he reported to the job site and informed the Assistant Foreman of the previous injury and indicated that he was going to a doctor. The doctor then treated Claimant and gave him a note saying that he should not work for five days. Claimant had no further contact with his supervision, but filled out an accident form on that day and mailed it to the Superintendent's office. He was subsequently informed (by a letter dated July 31, 1986) of his removal for service because of his alleged violation of a number of Carrier's rules by failing to file a personal injury report and falsifying such report. Following an investigative hearing, Claimant was dismissed from Carrier's service, having been found guilty of the charges.

Carrier insists that Claimant failed to fill out the report at the proper time of the alleged injury and in so doing violated Carrier's rules. Furthermore, he failed to indicate to any supervision of his subsequent lay-off for a period of five working days. Petitioner on the other hand argues that Claimant properly notified Carrier of his injury on the day following the

-3-

incident and then after seeing a doctor, filled out a medical accident report. Thus he complied with all of Carrier's requirements.

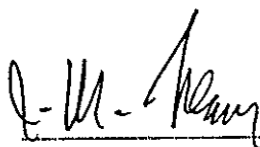
The record indicates that Claimant had been involved in at least six other known accidents while an employee. He was aware of the proper procedure. It is also apparent that he did not indeed report the accident on the day that it occurred, which was an direct violation of Carrier's rules. Furthermore, he never indicated that he would be off following his visit to the doctor for treatment of the alleged incident and accident. Thus, he knew what the procedure was and did not comply. However, objectively, it is apparent that Claimant did in part at least attempt to conform to Carrier's standard requirements. He must bear some culpability, however, for his failure to comply with the specific requirements of which he was aware. It is this Board's belief that Claimant shall be given one last chance to conform to Carrier's rules and comply with requirements with respect to reporting accidents. Therefore, he shall be reinstated to his former position with all rights unimpaired but without compensation for time lost as result of his responsibility for the incident.

AWARD

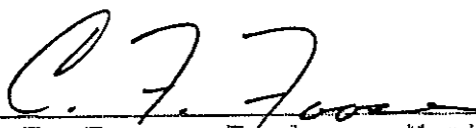
Claim sustained in part. Claimant shall be returned to service with all rights unimpaired but without compensation for time lost.

ORDER

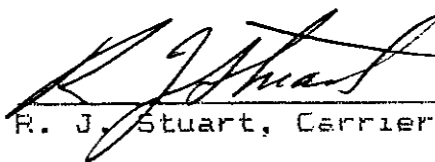
Carrier will comply with the Award herein within 30 days from the date hereof.



I. M. Lieberman, Neutral-Chairman



C. F. Foote, Employee Member



R. J. Stuart, Carrier Member

San Francisco, California  
December 6, 1988