PUBLIC LAW BOARD NO. 2439

Award No. 136
Case No. 136

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

STATEMENT OF CLAIM: "1. That the Carrier violated the current Agreement when it dismissed Track Laborer F. L. Trujillo. Said action being excessive, unduly harsh and in abuse of discretion.

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

FINDINGS

Upon the whole record. after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning or 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.

Claimaint entered Carrier's service in 1979. He was dismissed for violation of Rule G on October 17, 1985. Thereafter, Mr. Trujillo went through a rehabilitation program from December 2, 1985

through January 1, 1986. On approximately January 5, 1986, he agreed to reinstatement which included the condition that he abstain from the use of alcohol and drugs and, further, that he would submit to random toxicological testing. On Septmeber 8, 1986, Claimant was required to take a toxicological urine test. Approximately eight days later, the contract laboratory reported a positive finding for Claimant for both marijuana and cocaine. He was thereupon suspended from service pending investigation. A formal investigation was held on September 24, 1986 which Claimant did not attend. As a result of the investigation, Carrier determined that he had violated Rule G, as well as his agreement to abstain from the use of druos, and was dismissed from service by a letter dated October 6, 1986.

Based on the record, there is no question with respect to the results of the testing procedure. Ordinarily, violations of Rule G are considered serious enough transgressions to be almost automatically grounds for dismissal. In this instance, the seriousness of the offense was even more than one would normally expect. Carrier, in accordance with a relatively modern and enlightened program which included a rehabilitation period, found Claimant to have violated his agreement and was under the influence of drugs during the period following his immediate rehabilitation. Thus, after one discharge and rehabilitation and an agreement not to use any of the controlled substances,

Claimant violated his agreement. There can be no doubt but that Carrier within the limits of its enlightened and appropriate program found Claimant guilty of a serious violation and was correct in its determination that he be dismissed.

AWARD

Claim denied.

I. M. Lieberman, Neutral-Chairman

C. F. Foose, Employee Member

R. J. Stuart, Carrier Member

San Fransico, California

1-10, 1989