

PUBLIC LAW BOARD NO. 2439

Award No. 145
Case No. 145

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

STATEMENT
OF CLAIM: "1. That the Carrier violated the current Agreement when it dismissed Mr. G. T. Martinez without a fair and impartial investigation. Said action being excessive, unduly harsh and in abuse of discretion.

2. That the Carrier reinstate Claimant to his former Carrier position 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 89-458 and has jurisdiction of the parties and the subject matter.

Mr. Martinez entered Carrier's service on December 18, 1974. On January 19, 1987, Claimant phoned his Roadmaster and requested three days off because of family problems. The Roadmaster granted

- 2 -

Claimant a week's vacation starting January 19, through January 23. Thereafter, Claimant did not report for work for a total of three weeks. He was charged with being absent from work without authority from January 26, through January 30, 1987. The record also indicates that as of January 19, 1987, Claimant was entitled to three weeks of vacation (earned). Following an investigative hearing, Claimant was found guilty of violating Carrier's rules with respect to unauthorized absence and was terminated by letter dated March 24, 1987. The record also reveals that Claimant had been disciplined on three occasions prior to this one for attendance problems in 1978 and 1979, including a ten-day suspension and also had been counseled on four separate occasions concerning absenteeism.

In support of Claimant's position, the Organization insists that there was a misunderstanding between the Roadmaster and Claimant resulting in the problem involved in this matter. Specifically, the Organization alleges, that the Roadmaster in response to Claimant's request for time off stated:

"Well that would be fine but I suggest that you take a whole week, one week at a time, instead of a partial week or vacation."

The Organization insists that the meaning of this statement was at issue. In short, Claimant was to return to work at an indefinite time and he thought he should take the entire three

weeks of vacation which he indeed had earned. Carrier on the other hand believes that there is no doubt but that Claimant was instructed to take one week of vacation by the Roadmaster's statement, and that he took additional time off without authorization. In view of his past poor record, the Carrier believes that the discipline was fully warranted.

Upon evaluating the testimony at the hearing, the Board is of the opinion that there is no question but that Claimant was granted one week of vacation. Thus, indeed, he was properly found guilty of an unexcused absence for the days charged. However, in mitigation of the Claimant's action, it must be observed that the statement in the telephone conversation was somewhat confusing. It could have been misunderstood and Claimant, realizing that he had three weeks of vacation and needing it for his family problems, took the time he had earned. Under ordinary circumstances the discipline invoked in this dispute would not be considered excessive. However, in view of the peculiar circumstances and the confusion involved, together with Claimant's poor record of violation of Carrier's absenteeism rules in the past, some discipline is appropriate. The Board concludes, therefore, that Claimant should be reinstated to his former position with all rights unimpaired, but with no compensation for time lost. This reinstatement shall be considered a final chance for Claimant to conform to Carrier's normal rules with respect to attendance.

AWARD

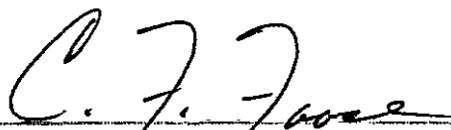
Claim sustained in part; Claimant shall be returned to service with all rights unimpaired but without compensation for time off as penalty for the infraction.

ORDER


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



I. M. Lieberman, Neutral-Chairman



C. F. Foose, Employee Member



R. J. Stuart, Carrier Member

San Fransico, California

1-10 . 1989