

PUBLIC LAW BOARD NO. 2439

Award No. 147
Case No. 147

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. F. V. Garcia. Said action being excessive, unduly harsh and in abuse of discretion.

2. That the Carrier shall 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 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 herein had been employed by Carrier in 1974. On August 4, 1986, Claimant was granted a leave of absence for family and personal reasons in order to go to Mexico. While in Mexico,

Claimant became ill and was treated by a physician who prescribed bed rest. At that time, Claimant put in a call to his father who is also a Carrier employee, explained the problem, and asked that Claimant's father notify Carrier that Claimant would be late returning to work from his leave of absence and the reason for that tardiness. The record also reveals that Claimant's father contacted the Roadmaster with the information concerning Claimant's predicament. Upon return from his illness, Claimant immediately returned to work and presented evidence of that illness to Carrier. By a letter dated October 1, Claimant was informed that a formal hearing was scheduled to take place in order to establish his responsibility, if any, for his alleged unauthorized absences from August 16 through August 22, 1986. Following the hearing, which was ultimately held on October 17, Carrier, by letter dated January 14, 1987, dismissed Claimant from service because of his violation of Rule 604.

Carrier takes the position that there was substantial evidence of record to establish the fact that Claimant was absent without proper authority from August 16 to August 22, 1986 in violation of Carrier's rules. In addition, Carrier notes that Claimant had a particularly poor past record of tardiness and absenteeism since being employed by Carrier.

The Organization notes that Carrier violated Rule 44 of the Agreement by its failure to respond to the initial Claim filed by

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Petitioner. Thus, on those grounds alone, the Petitioner argues that the Claim should be allowed as presented. In addition, Petitioner insists that the evidence in the transcript of the investigation reveals that Claimant did everything he possibly could under the circumstances. He was on an authorized leave of absence, fell ill, and upon his return furnished evidence to document his illness. Further, his father called Carrier (which was acknowledged by Carrier) to report the fact of his son's illness. In addition, the Organization argues, that Carrier rendered its decision some 89 days following the hearing which hardly conforms to Rule 43 of the Agreement which indicates that a decision shall be rendered promptly.

The Board has examined the record of the investigation with considerable care. While it is apparent that the Roadmaster did not authorize Claimant's absence during the period in question, after receiving a phone call from Claimant's father, this in itself is not persuasive. There is no possible way that Claimant could have returned to work upon completion of his authorized leave of absence, due to his illness. The illness was documented and there is no basis whatever, as the Board views it, for Carrier's conclusion that any rule was violated by Claimant's conduct. The facts are not in dispute. Dismissal simply was uncalled for, since there was no violation of any Carrier rules by the particular incident involved in this matter. Thus, the Board

believes that the Claim should be sustained in toto, less any earnings in terms of back pay which Claimant earned during the period he was out of service.

AWARD

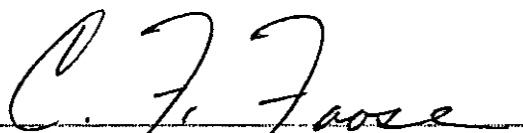
Claim sustained. Claimant shall be returned to service with all rights unimpaired and compensated for all wage loss suffered, less outside earnings during the period he was out of service.

ORDER

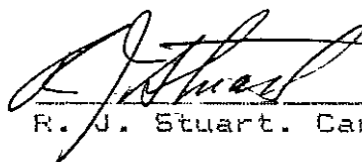
Carrier will comply with Award herein within thirty days from the date hereof.



I. M. Lieberman, Neutral-Chairman



C. F. Foote, Employee Member



R. J. Stuart, Carrier Member

San Francisco, California

1-10, 1989