

PUBLIC LAW BOARD NO. 2439

Award No. 150
Case No. 150

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company (Western Lines)

STATEMENT
OF CLAIM:

"That the Carrier violated the Current Agreement when it dismissed Mr. M. Guebara, Jr. from its service, said action being excessive, unduly harsh and an abuse of discretion.

"That the Carrier reinstate Mr. Guebara 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 89-456 and has jurisdiction of the parties and the subject matter.

Mr. Guebara was employed by Carrier on July 30, 1979. In March of 1987 he was working as a Track Foreman. The Record reveals that on September 5, 1986 Claimant was dismissed from service for violation of Rule G and subsequently reinstated on a leniency basis by letter dated November 14, 1986. The reinstatement was conditional and included among other things that Claimant would submit to random, unannounced alcohol and, or drug tests for a period of two years. Mr. Guebara submitted to such random drug tests on March 2, 1987 and subsequently in a letter dated March 6 was notified to be present for an investigatory hearing on March 19, 1987 with the allegation that he had failed the drug test since the test indicated that he had an illegal substance, namely cocaine in his system. Following the formal hearing Carrier decided that he was indeed guilty and he did have an illegal substance, cocaine in his system while working as a Track Foreman which constituted not only a violation of his formal agreement with Carrier, but also of Carrier's Rule "G". Based on this conclusion Claimant was terminated from service. The third sentence of Rule G provides as follows: "The use of

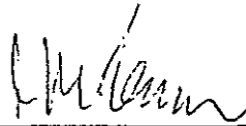
alcoholic beverages or intoxicants by employees subject to duty or their possession, use or being under the influence thereof while on duty or on company property is prohibited."

The investigation reveals that two distinct methods to confirm the presence of the prohibited substance were used by the testing laboratory. There is no doubt with respect to the results. Furthermore the transcript of the investigation indicates that Claimant admitted having used cocaine prior to the test. Thus there is no doubt with respect to Claimant's guilt of the charge. Further the record indicates that Claimant in the period following his dismissal failed to avail himself of the proper enrollment in the Employee Assistance Program. Carrier indicates that had he so enrolled he would be considered for a possible last-chance reinstatement with the approval of the Employee Assistance Counselors. However he totally rejected any participation in the Program.

From the Board's point of view there can be no doubt with respect to Claimant's guilt with respect to violation of Rule G as well as his own written agreement with Carrier with respect to his earlier termination. Additionally there is no basis for the technical objections raised by Petitioner with respect to the conduct of the hearing. There was no impairment of any of Claimant's due process rights in the conduct of the investigation of this matter. His guilt was established. The termination was appropriate in view of the seriousness of the infraction and his history. The Claim must be denied.

AWARD

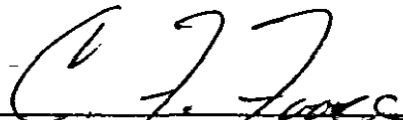
Claim denied.



I.M. Lieberman, Neutral-Chairman



R. J. Stuart--Carrier Member



C. F. Foose--Employee Member

San Francisco, California
August 31, 1989