

PUBLIC LAW BOARD NO. 2439

Award No. 158
Case No. 158

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. H. C. Olvera from its service, said action being excessive, unduly harsh and an abuse of discretion.

"That the Carrier reinstate Mr. Olvera 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.

The Claimant herein had been employed by Carrier in 1971. For his last five-and-a-half years of employment he had been serving as a Roadmaster. The record indicates that on July 22, 1986 Claimant pleaded guilty to the felony of incest in the County Superior Court. As a result of pleading guilty he was sentenced to 365 days in jail without parole with the time to be served essentially on weekends. Carrier was informed of this conviction in 1987 in October. As a result of this information, on October 23, 1987 Carrier required Claimant to resign as Roadmaster and thereafter was withheld from service. He was subsequently notified by letter dated October 30, 1987 to be present at an investigatory hearing relating to his conviction of a felony. As a result of investigation Mr. Olvera was terminated by Carrier for violation of Carrier Rule L and also Carrier Rule 607. Carrier Rule L specifies that employees must conduct themselves in such a manner that the Company would not be subjected to criticism or loss of good will. Carrier Rule 607 deals with employee conduct, being, among other things, immoral.

Subsequent to the discharge letter dated December 8, 1987 and Claimant's appeal, by letter dated May 17, Carrier's Labor Relations Officer agreed to reinstate Claimant on a leniency basis provided that he pass the required physical examination and, of course, without compensation for time lost. This offer was refused by Claimant. This offer was followed up by a further offer on July 26, 1988 in which there was the proviso that Claimant was not being prejudiced in his right to progress the Claim involved in this matter in his leniency reinstatement. Having received no response to this letter Carrier again communicated with Claimant in September of 1988, indicating that he contact Carrier so that his failure to report for duty would not be construed as abandonment of his employment. Finally on October 5, 1988 Carrier confirmed an understanding reached that day during a phone conversation in which Claimant agreed that he had abandoned his employment with Carrier and that he had voluntarily permanently severed his position as an employee. Finally by letter dated January 30, 1989 Carrier confirmed the fact that Claimant's employment was terminated.

Petitioner argues, among other things, that Claimant successfully continued in his occupation as a Roadmaster for some 16 months following his conviction of the felony. Furthermore the Organization argues that he was given three different penalties for the same offense, which seemed highly improper. Those three penalties included the Civil Action by the Court, his required resignation from his Carrier position as Roadmaster, and finally his dismissal based on the evidence obtained from the Court proceeding. The Organization argues that it is particularly difficult to accept the dismissal, especially in view of the Court's efforts to support Claimant in his employment relationship with the Carrier by means of the mode of satisfying his sentence. Furthermore, the Organization cites Claimant's 17 years of unblemished service with the Carrier.

Carrier's position is that his guilt of the charges is evidenced by his admission of guilt in the Court proceeding, making unnecessary any further establishment of that guilt in the investigation. Furthermore

Carrier notes that Claimant received a fair and impartial hearing and he was clearly guilty of the charges. In addition Carrier notes that it had given Claimant every opportunity to return to its service which he chose not to do.

From the Board's point of view this is a most unusual case. It is particularly difficult in view of the fact that Claimant, following his conviction, served some 16 months without problem prior to his being forced to resign as Roadmaster and subsequently dismissed. Under other circumstances the Board's reasoning in this matter might very well have resulted in a different outcome, however the bottom line in this dispute is the fact that Claimant refused to return to service of Carrier and terminated permanently his relationship with the Carrier. For that reason and that reason alone the Board has no recourse but to deny the Claim.

AWARD

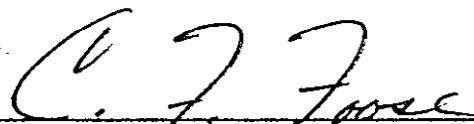
Claim denied.



I. M. Lieberman, Neutral-Chairman



R. J. Stuart--Carrier Member



C. F. Foote--Employee Member

San Francisco, California
August 31, 1989