

PUBLIC LAW BOARD NO. 2439

Award No. 160
Case No. 160

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. R. Tinsley from its service, said action being excessive, unduly harsh and an abuse of discretion.

"That the Carrier reinstate Mr. Tinsley 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 record indicates that Claimant was returning to service from an off-duty injury and thus was required to submit to a physical examination prior to that return. Part of that examination was a urinalysis. The Record specifies that the urinalysis showed that Claimant had in his system both cocaine and marijuana. The test was made on December 23, 1987. Subsequent to this material being received by Carrier, Claimant was cited for violation of Rule G and notified to be present at a hearing to develop the facts with respect to his responsibility for the alleged violation. The hearing was held and subsequently by letter dated January 20, 1988 Claimant was notified that he was dismissed from service, having been found guilty of having both cocaine and marijuana present during the test.

There is no question with respect to the facts in this matter, nor are those facts in contest. Clearly Claimant was guilty of violation of Rule G. In this instance, however, it is apparent that Claimant desired to rehabilitate himself by participation in Carrier's Employee Assistance Program. For that

reason it is this Board's view that Claimant shall be conditionally returned to service. As a condition of his return to service he must be considered to be in a satisfactory state by the Employee Assistance Counselor assigned to him as a primary factor. Should the Employee Assistance Counselor decide that he is complying with the provision to enter into a proper program he will be reinstated to his former position with all rights unimpaired, but without compensation for time lost. Should his former position be presently taken by a more senior employee, he will be allowed a displacement under the provisions of Rule 13.

AWARD

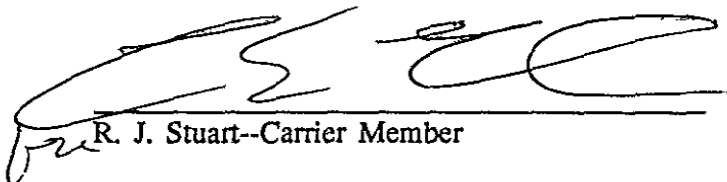
Claim sustained in part. Claimant shall be reinstated to his former position with all rights unimpaired, as indicated above, subject to the recommendation of his Employee Assistance Counselor. His reinstatement is conditioned upon his participation in the Employee Assistance Program. His return shall be without compensation for time lost.

ORDER

Carrier will comply with the Award herein within 30 days from the date hereof.



I. M. Lieberman, Neutral-Chairman



R. J. Stuart--Carrier Member



C. F. Foote--Employee Member

San Francisco, California
August 31, 1989