

PUBLIC LAW BOARD NO. 2439

Award No. 161
Case No. 161

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. D. B. Wallace from its service, said action being excessive, unduly harsh and an abuse of discretion.

"That the Carrier reinstate Mr. Wallace 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.

Claimant had been employed by Carrier since 1974. On October 13, 1987 he twisted his ankle while climbing off the back of a welding truck. Due to the height of the truck and the condition of the steps it was necessary for him to step on a rock while dismounting from the truck. In doing so in this instance he twisted his ankle. Claimant informed the Roadmaster of his problem and on the following morning saw a doctor and after x-rays was placed in a walking cast for approximately three weeks.

Based on the facts of the injury incurred and the circumstances thereof Claimant was cited by a letter dated October 20, 1987 for carelessness and lack of proper safety while stepping from the bed of the truck. Following the formal hearing, based on the evidence at the hearing, Claimant was advised by letter dated January 11, 1988 that his responsibility for carelessness had been established and he was dismissed from service. The rules which Claimant was alleged to have violated provided as follows:

"Rule A": "Safety is of the first importance in the discharge of duty. Obedience of the rules is essential to safety and for remaining in service."

"Rule I": "Employees must exercise care to prevent injury to themselves or others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury."

Carrier believed that based on the record of the transcript and Claimant's prior record he was either injury prone or indeed a safety problem. He had had some eight prior accidents reported during his tenure with the Carrier.

The Organization argues that there was nothing at the investigation which established that Claimant was careless in any way on the day of the incident. In fact, according to the Organization just the opposite was true. Furthermore, according to Petitioner, Claimant had complained about the steps on the particular vehicle, but no action had been taken until after the accident occurred. Furthermore there was unassailable evidence to the effect that the steps on the truck had been altered and were not correct at the time of the accident.

As the Board views it the record does not support Carrier's conclusion that there was any safety violation on the part of Claimant. The fact that Claimant sustained an injury does not per se determine that he was in violation of the rules as charged in this instance. While there might have been a modicum of carelessness on the part of Claimant in stepping down from the truck, clearly a safety violation was not in question. In short, the termination of Claimant based on the evidence adduced at the investigation does simply not warrant it. As the Board views it the penalty in this instance for the minor carelessness on the part of Claimant, in view of his past record, shall be a 15-working-day suspension. Beyond that 15-working-day suspension he should suffer no losses whatever. Accordingly Claimant shall be reinstated to his former position with all rights unimpaired and with compensation for all losses sustained in excess of the 15-working-day suspension until such time as he is reinstated

to service. That compensation shall be from the period only from April 1, 1988, which was the date that his physician indicated that he was medically cleared to return to service. Furthermore the compensation shall be less any outside earnings during the period in question.

AWARD

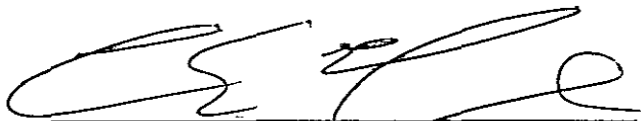
Claim sustained in part. The Claimant shall be reinstated to his former position with all rights unimpaired and his dismissal reduced to a 15-working-day suspension. He should be compensated for losses sustained in accordance with the findings above.

ORDER

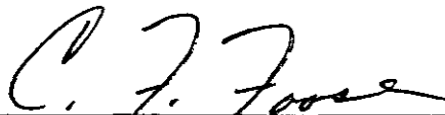
Carrier will comply with the Award herein within 30 days from the date hereof.



I. M. Lieberman, Neutral-Chairman



R. J. Stuart--Carrier Member



C. F. Foote--Employee Member

San Francisco, California
August 31, 1989