

PUBLIC LAW BOARD NO. 2439

PARTIES Brotherhood of Maintenance of Way Employees
TO
DISPUTE: and
Southern Pacific Transportation Company
(Western Lines)

STATEMENT OF CLAIM:

1. That the dismissal of Track Sub-Department, Track Supervisor, P. A. Tope, was in violation of the Agreement, and without just and sufficient cause, arbitrary and on the basis of unproven charges.
2. That the Carrier now reinstate Claimant to his former position, with seniority, and all other rights restored unimpaired, that he be compensated for all wage loss suffered as a result of the Carrier's violation, as mentioned above.

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 who had begun service with Carrier on September 8th, 1975, was a Track Supervisor on the Tucson Division. On August 18th, 1989, he received a letter charging him with possible responsibility for allegedly using a credit card for his personal gain and benefit at various locations, from August 1988 through January 1989. He was charged with being dishonest in violation of Company rules.

Following an investigation, by letter dated September 8th, he was discharged by the Carrier for using a credit card for his personal gain and benefit. That credit card being a card issued to the Company.

Petitioner takes the position that Carrier failed to establish any wrong doing on the part of Claimant. Furthermore, Carrier's position, as Petitioner views it, was that Claimant did not prove his innocence and therefore he must be guilty. Obviously improper. Petitioner notes that the entire case made by Carrier rests on arithmetic in an attempt to establish that Claimant bought more gasoline than he could have used in his vehicle. Then it is assumed that this was sufficient to establish that he was stealing. According to Petitioner, Claimant simply was not proven guilty of anything, and the claim should be sustained.

Carrier believes that Claimant purchased an excessive amount of gasoline for his Company vehicle. According to Carrier, based on the miles per gallon of gas of the truck and the total miles driven as indicated by the speedometer, Claimant could not have used all the gas he purchased for the truck. Carrier insists that it will not and cannot condone stealing by employees and the discipline in this instance was justified.

A careful examination of the record of this dispute, does not indicate any substantial evidence in support of Carrier's conclusion. To dismiss an employee for stealing is a most serious conclusion by any employer. Such conclusion must be buttressed at minimum by evidence of "taking" on the part of the employee. In the dispute involved here, Petitioner's position is essentially correct. Carrier, throughout the investigation and in its argument, insisted that Claimant did not prove his innocence. This is not the issue as it must be posed. The single problem in this instance is Carrier must establish Claimant's guilt in order to

prevail in this dispute. The facts simply do not support Carrier in that respect. There is absolutely no evidence of any taking of gasoline or misuse of credit cards on the part of Claimant. The sole evidence is an arithmetic assumption based on the utilization of gas and the assumed number of miles driven by Claimant. There is no proof in fact of any transgression on the part of Claimant. For the reasons indicated, this claim must be sustained. Claimant shall be reinstated to his former position with all rights unimpaired, and compensation for all wages lost (less any earnings from other sources).

AWARD

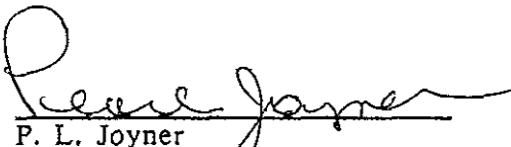
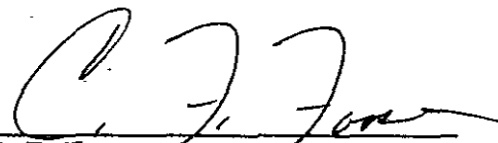
Claim sustained as indicated above.

ORDER

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



I. M. Lieberman, Neutral-Chairman


P. L. Joyner
Carrier Member
C. F. Foote
Employee Member

San Francisco, California
May 20, 1991