

PUBLIC LAW BOARD NO. 2439

PARTIES
TO
DISPUTE:

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

STATEMENT OF CLAIM:

1. That the Carrier violated the current Agreement when it dismissed Track Laborer, L. D. Archuleta, said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier reinstate Claimant 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 seniority date with Carrier of January 26, 1984. At the time of his dismissal, he held seniority on a track sub-department of Carrier's Western seniority district. By letter dated February 22, 1990, Claimant was notified to be present at a formal investigation dealing with his alleged misuse of Carrier's credit cards during the period of September 23, 1988, through May 4, 1989, and August

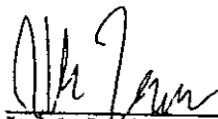
27, 1989, until February of 1990. He was charged essentially with dishonesty for misusing Carrier's credit cards. Following a formal hearing, Claimant was found guilty by Carrier and dismissed from service.

From the entire record of this matter, it appears that Claimant had not turned in credit cards, which the Company had issued to him, prior to his leaving Tucson, Arizona. In the course of retaining Carrier's credit cards, according to the record, Carrier found that he had made charges of totalling some \$3,000 over the two periods involved for a number of items. Those items including grocery items, soft drinks, merchandise, gasoline, oil changes and tire repairs. The records indicated, after they were searched out by Carrier's security forces, that the charges were made for vehicles with many different license plates in four different states. In the course of the investigation, Claimant readily admitted that he had retained Carrier's credit cards and had used them for personal vehicles over a period of time and for a variety of items, for trucks and cars not belonging to the Carrier. Claimant acknowledged that he was wrong in what he did, he had learned a lesson, and was willing to pay back anything he charged if he received another chance from Carrier.

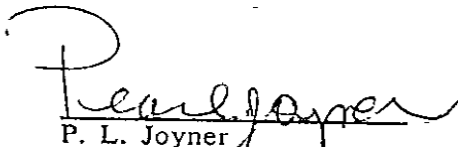
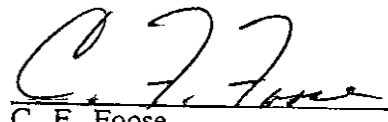
The record is quite clear that the Claimant admitted his guilt of the particular infraction, which was indeed a serious one. Petitioner believes that Claimant should be given another chance, as he had requested. However, the evidence is quite clear that Claimant was properly found guilty of the charge of dishonesty, and his contrition was not a sufficient basis to support a finding of not guilty. Carrier exercised its prerogative when it decided to terminate Claimant under all the circumstances for his dishonesty. This Board has no basis for questioning that decision. Therefore, the claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman


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

San Francisco, California
April 30, 1993