

Award No. 181
Case No. 181

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 Truck Driver, C. E. Cobiskey. 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.

The record indicates that Claimant had a seniority date of May 26, 1972, and was a truck driver in the bridge and building sub-department in the Oregon Division. By letter dated January 16, 1990, Claimant was notified to attend a hearing with respect to charges of unauthorized absence from duty on December 28, 1990, January 3, 1989, January 3, 1990, and January 16, 1990, and for refusal to submit

to toxicological testing on January 15, 1990. Following an investigatory hearing, in which neither the Claimant nor his representatives were present, Carrier found that Claimant had violated Carrier's rules and sustained the charges against him and dismissed him from service.


Following Claimant's dismissal, the first communication which offered any information to Carrier dealing with his absence, was received on April 23, 1990. Carrier determined, after careful consideration, by letter dated September 12, 1990, that it would reinstate Claimant to service with seniority unimpaired. Carrier's rationale was that the discipline he had received was sufficient for the particular infraction and it was clear that the question of compensation and time out of service was subject to appeal. Thus it appears that the sole function of this Board is to determine whether indeed the discipline from the beginning was appropriate, and therefore whether indeed there should be payment of compensation for time lost.

The record of this dispute has been carefully reviewed. The Board does not believe that it is necessary to deal with the question of the refusal of Claimant to submit to toxicological testing, which was one aspect of the charge against him. His absences on the three dates involved, without authority, were sufficient to justify punishment which Carrier determined was appropriate in this instance. There is no basis, whatever, for excusing those days, as far as the record indicates. Even though there might have been a storm on one of those dates, there is no evidence of a good reason for his absences over the three days in question. Indeed, Claimant had no reason which was ever enunciated for his absence on the days which he was charged with. For the reasons therefore apparent without dealing with the matter of a toxicological testing controversy, the Board believes that Carrier has justified its disciplinary decision in this matter. Claimant was

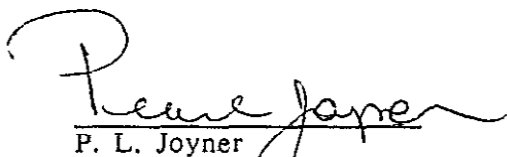
absent without authority, and his discipline for that reason, should be affirmed.
The claim is without merit and must be denied.

AWARD

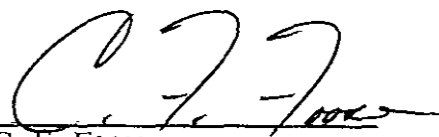
Claim denied.



I. M. Lieberman, Neutral-Chairman



P. L. Joyner
Carrier Member



C. F. Foose
Employee Member

San Francisco, California
April 30, 1993