

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 Crane Operator, J. M. Hernandez. Said action being excessive, unduly harsh and in abuse of discretion.
2. That Carrier shall now reinstate Claimant to his former 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, with a seniority date of 1975, had been out of service due to a medical disability, since December of 1989. Upon his release to duty, he was required to complete a return-to-duty physical examination, including toxicological screening. This examination took place on March 2, 1990. The record indicates that Claimant had tested positive, as part of the drug screen, for

"PCP" in the course of his physical examination. For this reason, Claimant was charged with alleged violation of Carrier's Rule G, and an investigative hearing was scheduled. The hearing was held on June 12, 1990, and following the investigation, Claimant was dismissed from service.

The Board notes that in the course of the hearing it was indicated that the initial screening was confirmed by a subsequent confirming test and the presence of PCP was established. The record also indicates, and this is the second time that Claimant had been disciplined for a violation of Rule G. He was aware, according to the record, of what was required prior to reinstatement to service, and was aware of Carrier's policy with respect to Rule G. That policy indicates, inter alia, that an employee, after he had been out of service for one year, could be considered for a return-to-duty, by reporting to Carrier's Employee Assistance Counselor for an evaluation, and receiving a favorable recommendation. Claimant was aware of Carrier's policy with respect to this, as indicated in his testimony at the investigation.

The record indicates that Claimant contacted the Employee Assistance Counselor in approximately March of 1991, and entered into a Rehabilitation Program. As of September 18, 1991, Carrier had not received a favorable recommendation from the Employee Assistance Counselor with respect to Claimant's possible return to service.

From the entire record, there is no doubt but that Claimant was in violation of Rule G at the time of his physical examination. This was his second violation of Rule G, and Carrier was within his rights to discipline him. This is particularly true in view of the fact that he did not even bother to report to the Employee Assistance Program until some 9 months following his termination. Carrier was

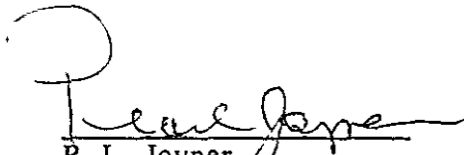
not required to exercise leniency in this situation, even by its own policy, until after at least a year following employee's dismissal and the favorable recommendation. Neither of these factors were present as of the date of this dispute being presented to this Public Law Board. For that reason, the claim has no merit for this employee for his second identical offense.

AWARD

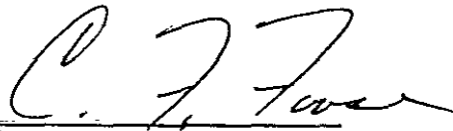
Claim denied.



I. M. Lieberman, Neutral-Chairman



P. L. Joyner
Carrier Member



C. F. Foose
Employee Member

San Francisco, California
April 30, 1993