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PUBLIC LAW BOARD NO. 1795Award No. 32 2  
Case No. 32 2

## OFFICE OF GENERAL CHAIRMAN

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

STATEMENT "1. That the Carrier violated the provisions of the Agreement when it  
OF CLAIM dismissed Claimant Cesar Garcia for his alleged violation of Carrier's  
Rule 810, absent without proper authority, said action being in  
abuse of discretion and extremely excessive.

2. That Claimant now be reinstated to service of the Carrier with senior-  
ity and all other rights restored unimpaired, that he be compensated  
for all wage loss suffered commencing November 3, 1977 and all subse-  
quent days thereto, and his personal record be 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.

In this dispute Claimant was charged with being absent from work on thirty-seven different dates from May 4 to November 7, 1977. Following an investigation he was found guilty of the charge and dismissed from Carrier's service. There is apparently no dispute in this matter with respect to facts and the sole issue is not the matter of Claimant's guilt, which both parties are in agreement concerning, but rather in the nature of the discipline assessed.

Claimant was a relatively new employee who had been with Carrier for approximately three years. He had had attendance problems previously in 1976. As a result of that incident he was suspended for a period of forty days. In this instance, this young employee was absent thirty-seven days over a six month period. This is clearly an unacceptable attendance record from Carrier's point of view regardless of whether the employee calls in and reports his absence. However, under all the circumstances this Board does not view

this infraction of the rules, by Claimant as warranting the supreme penalty of dismissal. We shall order that Claimant be reinstated to his former position with all rights unimpaired but without pay for the time lost. It is hoped that this lengthy period of suspension will result in Claimant being aware of the importance of proper attendance. It should be noted however, that should Claimant not adhere to normal, proper attendance standards, he may be dismissed forthwith and any appeal would normally be given short shrift under such circumstances. Therefore, the claim is sustained in part as indicated above.

AWARD

Claimant will be reinstated to his former position with all rights unimpaired but without pay for time lost.

ORDER

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



I.M. Lieberman, Neutral-Chairman



L.C. Scherling-Carrier Member



S.E. Fleming-Employee Member

August 31, 1979  
San Francisco, California