

PUBLIC LAW BOARD NO. 2439

Award No.21  
Case No.21

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

- STATEMENT  
OF CLAIM
1. That the Carrier violated the Agreement when on March 12, 1979 it suspended Foreman F. Aguirre and Assistant Foreman M.P. Quiroz from service pending formal investigation and subsequent thereto, held Claimants suspended from service until April 30, 1979 on charges not supported by the hearing record, said action being unduly harsh, excessive and in abuse of discretion.
  2. That Claimants Aguirre and Quiroz each be paid at their respective rates of pay for all time lost while wrongfully suspended from their assigned positions from March 12, 1979 to April 31, 1979, the date they were allowed to return to their positions, and their personal records be cleared of the charges placed thereon as a result of the Carrier's action."

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.

Claimants herein were Foreman and Assistant Foreman respectively on a Regional Tie Gang at the time of the incident herein. The Gang in question, Gang T-4, was engaged in the work of replacing railroad track cross ties. Part of this operation included the installation of anti-creepers which prevent the track from moving in the direction the trains are going.

The region in which the Gang operated covered a territory of over 1000 miles in distance from end to end. This required the Gang to work on the job and return home generally only on weekends. On Friday, March 9, 1979, the Gang was engaged in the work of installing new cross ties in an area east of Mortmar, California. Just prior to the end of the work day on March 9, the General Track Foreman, informed the Claimants

mants herein that he had been instructed by his supervisor that the anti-creeper work was behind on that particular day and had to be completed. Claimants instructed their crew to do the work in question but the crew apparently was outraged at being required to work at the time they were expecting to go home and refused to do so. At the regular quitting time, the men got into their bus and left followed by a vehicle in which the Claimants were riding. In short, the work was not done as the Claimants had been instructed to perform it. As a result, Carrier had to call out two other gangs on an overtime basis to complete the work.

Following an investigation in which Claimants were charged with dismissing members of the Gang before the work was completed or permission was granted and their own absence from duty before the work was completed on the day in question,

the two men were assessed a forty-five day suspension. There were no procedural problems encountered in the course of the investigation.

Petitioner insists that the work of installing anti-creeper was not accomplished on a daily basis and was generally ignored until overtime was required. This poor planning by the management, according to the Petitioner, deprived the employees of the Gang of an earlier start on their weekend visits home. The Organization asserts that the work in question could have been performed on a daily basis but it was not done. On the day of the incident in question, according to the Organization, the employees in the Gang had been led to believe that they would be dismissed at their regularly assigned quitting time in order to go home. Upon receiving the instructions to complete the anti-creeper work, the Gang elected not to adhere to those instructions and instead departed for their regular weekend visits home. The Organization raises the point that it believes that even instructions directly from the General Track Foreman would not have deterred the Gang in their desire to leave at the completion of their regular day. Petitioner insists that the discipline assessed was excessive and unduly harsh and in abuse of discretion.


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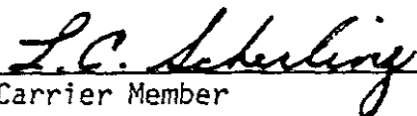
Carrier argues that there was indeed a mutiny on the day in question and that Claimants herein were part of that mutiny. On that basis the discipline assessed was certainly lenient. Carrier argues that the General Track Foreman on a number of occasions in the course of the day had required the two Claimants to replace the anti-creepers so that they were aware of the necessity for the work substantially prior to the end of the day. Furthermore, according to Carrier, Claimants herein could have said something to the General Track Foreman who was nearby when the men refused to do the work but instead, they got into a car and followed the Company bus back to the camp.

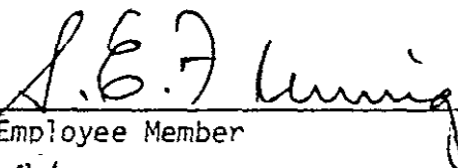
It is quite clear that Claimants herein made little effort to deter the Gang under their supervision from leaving the work site on the day in question. The record is devoid of any information indicating significant effort by either of the Claimants for that purpose. In addition, the two supervisors, the Claimants herein, certainly should have at very least remained themselves at the work site or reported the matter to the General Track Foreman rather than simply departing at the same time as the mutinous crew. It is evident that regardless of the circumstances and the concern of members of the Gang to go to their homes on the weekend in question, they did in fact, refuse under the guidance of Claimants herein to do the work involved. The lack of leadership of the two Claimants alone is sufficient to justify the discipline imposed. It cannot under any circumstances be considered harsh or in abuse of discretion in view of the events which transpired on March 9th.

AWARD

Claim denied.

  
I.M. Lieberman, Neutral-Chairman

  
Carrier Member

  
Employee Member

July 21, 1980  
San Francisco, California

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