

PUBLIC LAW BOARD NO. 2439

Award No. 26

Case No. 20

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

STATEMENT OF CLAIM "1. That the Carrier violated the Agreement when on August 21, 1979 it suspended Track Foreman James L. Norman from its service for a period of eighteen (18) working days (which included the holiday of September 3, 1979) on charges not sustained by the hearing record, said action being unduly harsh and in abuse of discretion.

2. That all charges against Track Foreman James L. Norman be rescinded, thus clearing his personal record; that he be paid for all loss of time suffered by him as a result of the suspension, that he be paid for the work performed by him on August 21, 1979 when it was required to complete Company form No. 20611 and the bookkeeping work performed for the Gang."

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.

This is a companion case to the dispute involved in Award No. 25 of this Board. The Foreman herein was the second man involved in the altercation described in the earlier Award. The facts described in Award No. 25 relates to the identical dispute and must be considered as applicable.

Petitioner argues, in this instance, that Claimant was prejudged by Carrier when he was removed from service pending the formal hearing with respect to the incident in question. Further the Petitioner claims that during the period of suspension and throughout the entire period, Claimant was allowed to maintain certain Carrier reports for which he was not compensated.

Carrier argues that that portion of the claim which relates to withholding Claimant from

service pending the formal hearing was consistent with the provisions of Rule 45 (a) of the Agreement which provides in part:

"Where circumstances indicate an employee should not be permitted to continue in service he may be suspended pending an investigation."

Carrier argues that an altercation between the Foreman and one of those employees working for him is a type of offense for which suspension is indicated.

There is no question with respect to the facts concerning the basic altercation which took place. Claimant, in particular as a Foreman, was even more culpable for engaging in an altercation with one of the employees working for him. Whether or not there was provocation is immaterial. There is no evidence to indicate prejudgement on the part of Carrier in terms of the suspension prior to investigation involved in this dispute. Carrier properly acted within the provisions of Rule 45 (a) supra.

The question of the alleged work performed by Claimant subsequent to the suspension may not be considered by this Board for two reasons: first, there is no specific evidence concerning the work performed and the time involved and secondly, such a claim is a time claim which does not belong in a discipline dispute such as this.

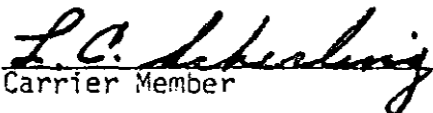
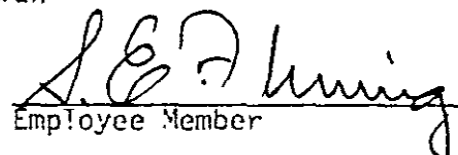
In view of the seriousness of an altercation such as this particularly on the part of supervision and for the reasons indicated in Award No. 25, this claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman


Carrier Member
Employee Member

July , 1980
San Francisco, CA

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