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PUBLIC LAW BOARD NO. ²⁴³¹~~1795~~

VICE CHAIRMAN

OFFICE OF GENERAL CHAIRMAN

Award No. ~~34~~ 3
Case No. ~~24~~ 3

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

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the Agreement when it suspended Claimant Eusebia Ornelas pending results of formal hearing held on February 3, 1978 and further violated said Agreement when subsequent to the hearing it suspended Claimant for a period of ninety days on charges not proved in the hearing record, said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier further violated the Agreement when a Division Engineer failed to comply with the provisions of Article V, Section 1(a) of Agreement of August 21, 1954 by not properly denying claim.
3. That Claimant now be compensated for all time lost and that his personal 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.

Claimant was charged with three instances of violation of Company rules. The first instance on January 8, 1978, he was charged with failure to obtain a proper permit for hauling an overweight load. As a result of this failure, he was cited by the California Highway Patrol for the violation of state law. Secondly, on January 13, 1978, he was charged with failure to know the vertical clearance of the load on his truck which struck an overpass resulting in damage to the heavy equipment boom on the truck and further he was charged for failure to report this accident until the morning of January 16, 1978. The third incident involved in this dispute was Claimant's failure to select a level location for purposes of loading a heavy grade-all at Carpentaria resulting in the grade-all falling off the trailer and injuring the operator after turning over. Following

an investigation of the charges Claimant was found guilty and assessed 120 day suspension. Subsequently, based on the Organization's appeal, the suspension was reduced to a ninety day suspension.

First, it is necessary to deal with the contention of the Organization that at the early handling of the dispute, the Division Engineer, in his letter, failed to meet the requirements of the rules in that his letter was not a proper denial of the claim. The letter in question dated April 18, 1978 provides in the second paragraph as follows:

"I have, again, reviewed the transcript and agreed that my decision might have been a little harsh, in view of the numerous vehicle accidents sustained by him, and felt at the time that because of his continued operation of motor vehicles it was unsafe for himself, other employees and to the public. Now, I am willing to reduce the suspension to a period of ninety (90) days, and Mr. E. Ornelas may return to duty on April 24, 1978 with seniority unimpaired but with no compensation for loss of time."

An evaluation of the language in letter indicates that although it may not have met the technical requirements of the rule in that it did not contain an unequivocal denial of the claim its intent was obvious and the language, though possibly not sharp in definition, was sufficient to indicate that the claim had been denied and that the writer of the letter was willing to modify the penalty. Therefore, this aspect of Petitioner's claim must be rejected.

An examination of the transcript of the investigation reveals that there is not much question as to the events on the three days involved herein. On January 8 Claimant did not know the weight of the wrecker that he was transporting and did not secure that information from his superior. He was an experienced driver and was indeed responsible for the weight of his vehicle. As a result of the incident in question there was considerable delay in getting the equipment to its destination. With respect to the January 13 incident in which the tie handler was damaged, the record of the investigation reveals that Claimant merely was careless in not chaining down the boom and as a result of this omission on his part, the equipment was damaged when it struck an overpass as he was going through it with his truck. Even though the incident took place on Friday the 13th he did not report

the incident until January 16, the following week on Monday. These facts are undisputed. Concerning the incident on January 19, there is no question but that in the process of loading the grade-all onto his trailer, the equipment turned over injuring the driver and causing damage to the equipment. The evidence indicates that the grade-all was being loaded in a position in which the ground was not level and the tractor and trailer were at right angles to one another as well. Claimant was clearly culpable in this particular instance even though he insists that he possibly should have had assistance in loading the grade-all in more suitable fashion.

The Organization indicates that Claimant had a perfectly clear personal record prior to the incidents involved herein. It is urged further that there was some responsibility on the part of supervisors for at least the lack of information resulting in the traffic violation on January 8 which should serve to mitigate the discipline imposed in this situation. Carrier, on the other hand, argues that the three incidents indicated a significant lack of good judgment on the part of Claimant which as an experienced driver was inexcusable. According to Carrier, the damage to both the one individual and Carrier property involved in these incidents was sufficient to warrant the discipline, per se.

There is no doubt that Claimant had a particularly bad week in January of 1978. As a driver with many years of experience in working for Carrier, there is no rational explanation for the three incidents occurring as they did in such a short span of time. There is no doubt but that Carrier, at the investigation established, Claimant's responsibility for the three incidents in question. He did fail to find out what the weight of the equipment he was hauling was on January 8 and as a result received a traffic ticket that day and there was substantial delay in completing his assignment. There is also no question that he was responsible for the failure to check the vertical height of his load or tie down the boom resulting in the accident on January 13, 1978. Furthermore, the evidence clearly indicates that his failure to select a level location for the purpose of loading the grade-all resulted in the accident on January 19th. Since Carrier has established the guilt of Claimant to the charges contained in the original investigative letter,

the only remaining function of this Board is to determine whether or not the discipline assessed Claimant was arbitrary, capricious or improper in any other respect. In view of Claimant's record, even though we may have differed with Carrier on the measure of discipline, it is recognized that the discipline was reduced from 120 to ninety days and we cannot substitute our judgment for that of Carrier in a situation such as this. Therefore, the discipline must stand and the claim must be denied.

AWARD

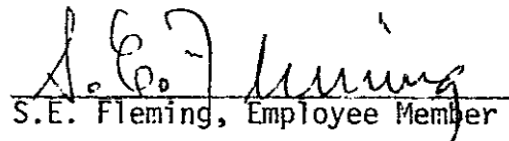
Claim denied.



I.M. Lieberman, Neutral-Chairman



L.C. Scherling, Carrier Member



S.E. Fleming, Employee Member

August 31, 1979
San Francisco, California