

PUBLIC LAW BOARD NO. 2439

Award No. 30
Case No. 30

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

"1. That the Carrier assessed discipline which is excessive and unduly harsh and in abuse of discretion when it dismissed Track Laborer D.M. Barreras from its service subsequent to the formal hearing held November 9, 1979 in which he was charged with allegedly being in violation of Carrier's Rule M-810 (absent without proper authority).

2. That Track Laborer M.D. Barreras, now be reinstated to the Carrier's service with seniority and all other rights restored unimpaired and that he be paid for all time lost as a result of his wrongful dismissal, and that his personal record be cleared of the charged placed thereon."

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 failure to protect his assignment on a continuous basis and also with being absent from duty without proper authority on October 23, 1979. Following an investigation, by letter dated December 6, 1979, he was dismissed from service. The record of the investigation reveals, without conflict, that Claimant had been absent on a number of occasions and tardy on a number of others. The record also indicates that a number of the dates on which he is charged with being absent, he notified someone at the headquarters that he could not report to service due to mechanical problems with his automobile. On a number of the other dates involved, Claimant did report a few minutes late but was denied the days work because of that tardiness even though his gang had not left the headquarters point. It is also noted that employees in gangs such as that which Claimant was in, are paid on an actual minute basis.

There is no question but that Claimant was guilty of the charge as propounded by Carrier. The evidence is clear and his own admissions support that conclusion. There is however, one mitigating circumstance which must be taken into consideration. Claimant testified, without rebuttal, that he had some serious problems with his foreman which involved his foreman abusing him and also provoking his absences by the foreman's conduct towards Claimant in front of the entire gang. While it is clear that Claimant had recourse through the grievance machinery of the Agreement to handle this problem, it is surely an element which must be considered in assessing the discipline imposed. It is also noted that Claimant began his service with Carrier approximately eight years prior to the incident herein.

With some reluctance the Board must conclude that Carrier's discipline in this case may have been somewhat arbitrary under the circumstances and in view of Claimant's service. It is the Board's view that Claimant obviously must conform to the attendance standards which Carrier must expect from its employees. However, under the circumstances herein, it is the Board's conclusion that Claimant should be reinstated to his former position with all rights unimpaired but without compensation for time lost. Thus, the time out of work shall be considered a disciplinary layoff with respect to the infraction involved in this dispute. An additional caveat must be clearly understood in that this must be construed to be Claimant's last chance. If his attendance is not satisfactory he certainly should not be given a pass by Carrier and may not expect to continue his employment under that circumstance. Thus, Claimant must report for work on a normal basis with the same expectations as any other employee in order to retain his employment. It is with that understanding only that he shall be reinstated to his former position.

AWARD

Claim sustained in part; Claimant shall be reinstated to his former position with all rights unimpaired but without compensation for time lost.

ORDER

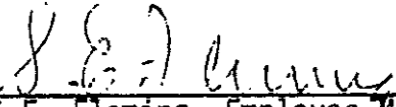
Carrier shall comply with the Award herein within thirty (30) days from the date hereof.



I.M. Lieberman, Neutral-Chairman



L.C. Scherling, Carrier Member



S.E. Fleming, Employee Member

January 26, 1981
San Francisco, CA