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PUBLIC LAW BOARD NO. 2439
~~1785~~

Award No. ~~25~~ 4
Case No. ~~25~~ 4

OFFICE OF GENERAL CHAIRMAN

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 A.W. Nun from service of the Southern Pacific Transportation Company for a period of sixty (60) days as a result of formal hearing held on March 31, 1978, said action being excessive and in abuse of discretion.
2. The Claimant now be compensated for all wage loss suffered and that the charges be cleared from his service record."

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 dispute involves a sixty day suspension following a formal hearing held on March 31, 1978. Claimant, herein, was charged with being in violation of Rule 801 of Carrier's General Rules and Regulations for being insubordinate and quarrelsome and for his alleged misconduct on March 22, 1978.

On March 22, 1978, Claimant went up to the roadmaster stating that he considered riding in the gang truck to be unsafe because of the driver. He had previously asked the foreman to change the drivers because of the unsafe condition and had not gotten a satisfactory answer from the foreman but rather the foreman said he was leaving and would be back later. Claimant indicated in his testimony that he was afraid of riding with the driver in question because he drove with one hand and because he had frequently crossed the middle line of an interstate highway. He claims he told this to the roadmaster. The roadmaster, in his testimony, indicates that he was not told anything about the erratic driving but that the driver drove with one hand. After telling this to the roadmaster, Claimant was in-

structed to either ride in the truck or go home. Following this exchange which was rather belligerent on both sides, Claimant threw his hard hat into the office of the roadmaster a few moments later and apparently inadvertently hit the roadmaster with his hard hat. Subsequently Claimant was suspended and ultimately after the investigative hearing assessed the suspension indicated above.

Carrier maintains that Claimant was clearly insubordinate and vicious in his actions with respect to the roadmaster and clearly deserved the punishment that he received. Carrier argues that it is well established that an employee must obey the orders of management even if it believed to be in violation of the applicable working agreement and turn to the grievance machinery for relief. While the Carrier understands the exception to the "obey now and grieve later" rule, that exception involves safety and must be supported on a reasonably objective basis by the employee. Carrier argues that any facts which would reasonably document Claimant's concern about the driver are totally absent in this case. Carrier states that the riding in the gang truck was an inherent part of the job and the safety risk involved was an accepted everyday occurrence.

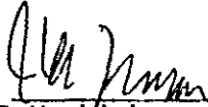
The Organization contends that Claimant was justified in raising the safety issue with his supervisors. He had failed to receive any attention from his immediate foreman and took the matter to the next highest level of supervision. Here again, according to the Organization, Claimant was ignored and told to ride or leave the property. Such attitude on the part of the supervision, according to the Organization, was incorrect and contrary to all recognized practices. Further, the Organization contends that there was no action taken against the roadmaster even though his attitude and actions were certainly contrary to normal management practices since he was also belligerent, quarrelsome and totally unconcerned with Claimant's complaint. While recognizing that Claimant's behavior was not entirely correct, Petitioner argues that the discipline against Claimant was excessive in view of the circumstances leading up to the dispute.

Claimant's actions in arguing with the supervisor and being prepared to fight were wholly unwarranted and deserving of discipline. Such actions cannot be condoned by Carrier. The

additional improper act of throwing his hard hat into the window and even though inadvertently hitting the roadmaster was also unacceptable conduct on the part of Claimant. However, it must be pointed out that Carrier officials in this dispute did not behave properly. It is certainly apparent that had there been any attention paid to Claimant's concern by either his foreman or the roadmaster, the issue herein would probably never have arisen. Claimant was legitimately concerned with his safety problem in his mind. Whether he was justified or not in his position is not material in this instance. Clearly there was no attempt to determine whether or not his position was correct by management. In fact, the roadmaster's response to him on either riding in the truck regardless of his complaint or to leave and go home was clearly improper. It is our conclusion therefore, because of the culpability of the roadmaster in this dispute and in view of the circumstances leading to the discipline herein, the quantum of discipline assessed shall be reduced to thirty days and Claimant shall be made whole for the difference in discipline assessed.

AWARD

Claim sustained in part; the discipline shall be reduced to thirty days and Claimant shall be made whole for the other thirty days in which he was suspended.


I.M. Lieberman, Neutral-Chairman


L.C. Scherling, Carrier Member


S.E. Fleming, Employee Member

August 31, 1979
San Francisco, California