

## PUBLIC LAW BOARD NO. 2439

Award No. 40

Case No. 40

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

STATEMENT . "1. That the Carrier violated the provisions of the Agreement when it suspended Paver Mr. Ramon Hernandez from service for a period of fifteen (15) calendar days as a result of a formal hearing held March 13, 1981, said action being excessive, unduly harsh and in abuse of discretion.

2. That Claimant be compensated at the rate applicable to his assigned position for all time lost while suspended therefrom commencing April 1, 1981 through April 15, 1981 and the alleged charges placed on his personal record be expunged therefrom."

## 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 herein had been employed by Carrier since September 30, 1952 and had an unblemished record. He was a member of Paving Gang No. 33 headquartered at Taylor Yard, Los Angeles, California.

The record indicates that on February 4, 1981 after quitting time a group of employees including Claimant were observed in the Company's parking lot at the Yard drinking beer. Three Carrier supervisors observed Claimant herein with a can of beer in his hand and testified that he was pouring the contents onto the ground as they approached. Two of the Carrier officials testified that Claimant's son admitted that his father had been drinking beer on the date of the occurrence when the Carrier officials approached the truck in which they were sitting. Following an investigative hearing

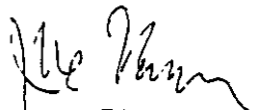
in which Claimant was charged with violation of Carrier's Rule "G" he was assessed a fifteen calendar day suspension (eleven actual working days) for the infraction.

Petitioner insists that Claimant was unable to understand English well enough to explain clearly what he was doing at the site to the Carrier officials who approached the vehicle. Further, Petitioner argues that the evidence does not support Carrier's conclusion that Claimant was guilty of the charges. Carrier, on the other hand, insists that the infraction was flagrant and viewed clearly by at least three Carrier officials and unquestioned as to the authenticity of the charge. Carrier argues that for possession and drinking of alcoholic beverages on Carrier property, the eleven working day suspension was proper and in fact, was lenient.

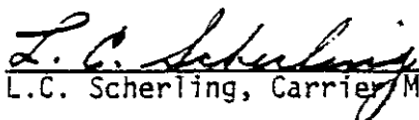
A study of the transcript of the investigation held on March 13, 1981 indicates that there was significant probative evidence to support Carrier's conclusion that the Claimant herein was consuming beer on Company premises after quitting time. The evidence of three Carrier officials is clear and unequivocal on this subject and was corroborated at least in part by Claimant's son who indicated that though his father could not speak English, he indeed had been drinking beer. Thus, the Carrier was correct in its conclusion that the three men were in violation of the Rule with which they were charged. The Board is of the opinion that the penalty assessed for the violation, a fifteen calendar day suspension, was neither excessive nor arbitrary or capricious. Thus, the claim must be denied.

AWARD

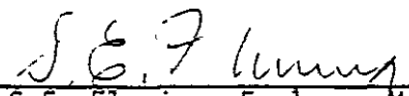
Claim denied.



I.M. Lieberman, Neutral-Chairman



L.C. Scherling, Carrier Member



S.E. Fleming, Employee Member

San Francisco, CA  
March 10, 1982