

PUBLIC LAW BOARD NO. 2439

Award No. 41

Case No. 41

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

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the Agreement when it suspended Paving Gang Foreman E.T. Puente from service for a period of fifteen (15) calendar days on charges not sustained within the transcript record of the formal hearing held March 13, 1981, said action being excessive, unduly harsh and in abuse of discretion.
2. That Claimant now be compensated for all time lost from his assigned position of Foreman, Paving Gang No. 33, which time is February 5, 1981 and April 1 through 14, 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.

The infraction charged against Claimant herein was under the identical circumstances as that discussed in Award No. 40 of this Board. Claimant, a Foreman, had over thirty years of service with Carrier. He was observed with two of his co-workers in the parking lot at the Yard after work consuming beer by three Carrier officials. The Claimant was charged with violation of Rule "G" which provides in pertinent part as follows:

"Rule G: The use of alcoholic beverages by employees or there possession, use or being under the influence thereof while on Company property is prohibited.

Employees shall not use, while on Company property, any substance that will in any way adversely affect their alertness, coordination, reaction, response or safety...."

This case is identical in every respect to that contained in the earlier Award (No. 40). The Organization, however, contends that the discipline was excessive in view of the fact that there was no impairment in any respect of Claimant's alertness, coordination or responses following the consumption of beer particularly in the light of the fact that the consumption took place after working hours. Carrier, on the other hand, points out that there is no doubt that he was observed with a can of beer in his hand and that Carrier officials smelled the breath and detected the odor of beer. Carrier argues that the eleven working day suspension assessed was moderate for the flagrant disrespect for an important rule in the industry particularly in view of the fact that Claimant was a Foreman.

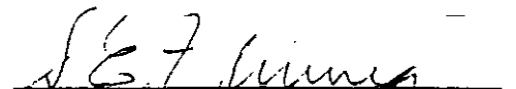
For the reasons indicated in Award No. 40, the Board concludes that the guilt of Claimant was clearly established and that discipline was certainly appropriate under all the circumstances. This claim also must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman


L.C. Scherling, Carrier Member
S.E. Fleming, Employee Member

San Francisco, CA
March 10, 1982