

PUBLIC LAW BOARD NO. 2439

Award No. 53
Case No. 53

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the Agreement when on April 16, 1981 it advised Track Foreman J.L. Mendoza to the effect that as a result of a formal hearing held April 3, 1981 he was found to be in violation of Carrier's Rules 801 and 806 and for reasons thereof, he was disqualified in the class of Extra Gang Foremen and Track Walker and his name was thereby removed from the seniority roster in those classes, said discipline being excessive, unduly harsh and in abuse of discretion.
2. That Claimant J.L. Mendoza be returned to his proper position as Track Foreman on Extra Gang No. 29 at Toledo, Oregon with all seniority rights restored unimpaired in the classes from which disqualified, and that he be compensated the differential between Track Laborer rate and that applicable to Track Foreman for all time lost therefrom, as well as any and all expenses incurred by him because of the Carrier's actions."

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.

In this matter Claimant, who held responsibility as a Track Foreman and also as a Track Walker, was charged with violation of Carrier's Rules 801 and 806 in that he was specifically accused of selling used Carrier railroad cross ties without authorization and keeping the money. Rule 801 provides, in pertinent part:

"Employees will not be retained in the service who are ... dishonest ..."

Rule 806 provides, in pertinent part:

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".... property of the Company must not be sold....except by proper authority."

Following a hearing held on April 3, 1981, on April 16 the Claimant was disqualified as an Extra Gang Foreman and as a Track Walker and his name was removed from the seniority rosters in those two classes. He was permitted to exercise his seniority as a Track Laborer and continue his employment in that class with the Carrier.

The Carrier points out that the investigation revealed that Claimant had conducted transactions involving selling of used railroad ties in the amount of twenty dollars, \$150 and \$300. Although he reimbursed Carrier for these sums, Carrier insists that had he not been caught up in the investigation, he would have retained the money for personal use. Hence, Carrier concludes that he was clearly guilty of the charges and the discipline imposed was quite lenient since violation of the rules in the matter involved in this dispute could result in dismissal.

The Organization insists that the discipline assessed in this dispute constituted an excessive exercise of Carrier's authority and discretion. The Organization points out that Claimant attempted to be cooperative with all involved in the investigation of this matter and a disqualification constituted excessive discipline inasmuch as his actions in this situation no way decreased his ability and knowledge to perform the duties of Track Walker and Extra Gang Foreman. It is also clear, according to the Organization, that Carrier did not establish clearly in the record sufficient evidence to support its conclusion that the charges were proven against Claimant.

A review of the transcript of the investigation reveals that there was ample evidence including Claimant's own admission to support Carrier's conclusion that he was guilty of the charges. Under the circumstances, the discipline imposed cannot be considered to be excessive. Dishonesty of the variety involved in this matter frequently results in discharge. The claim must be denied.

AWARD

Claim denied.

I.M. Lieberman
I.M. Lieberman, Neutral-Chairman

L.C. Scherling
L.C. Scherling, Carrier Member

S.E. Fleming
S.E. Fleming, Employee Member

San Francisco, CA
July 8, 1982