

PUBLIC LAW BOARD NO. 2439

Award No. 55

Case No. 55

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, in letter dated November 4, 1981, it advised Track Foreman Hector M. Sanchez that his discipline record had been assessed sixty (60) demerits because of an alleged infraction of Carrier's Rules 801 and 802 on September 4, 1981, said action by the Carrier being excessive, unduly harsh and in abuse of discretion.
2. That the demerits placed on Track Foreman Hector M. Sanchez's discipline record now 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 dispute herein is directly related to the matters discussed in Award No. 52 of this Board. The Claimant herein was the second participant in the altercation which was dealt with in the earlier award.

Carrier's position in this matter is that the Claimant herein may have contributed to the instigation of the altercation which resulted in Mr. Garza being dismissed in the earlier case. Further, there was some evidence of friction between the Claimant herein and Mr. Garza prior to the altercation. Carrier asserts that Claimant was clearly guilty of an irresponsible and unwarranted action as a foreman and that the demerits involved were a reasonable assessment of discipline for his part in the fracas. Petitioner, on the other hand, asserts that, at most, Claimant exercised poor judgment relative to the events which transpired on the day of the altercation, and there is no basis for the severity of the discipline assessed against him.


From the entire record of this matter, there is no doubt but that the Claimant herein, a supervisor, made threats with respect to Mr. Garza and, indeed, did participate in the altercation which resulted in Mr. Garza's dismissal (see Award No. 52). Even

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though Mr. Garza was clearly at fault in returning to the work site after having been removed from service, and also it is clear that he did, indeed, beat up the Claimant herein, there is no question but that the Foreman's attitude and actions contributed to the altercation. It is therefore clear to this Board that the decision by the Carrier in terms of the extent of discipline and penalty imposed was quite appropriate to the particular circumstances. The Claim must be denied.

AWARD

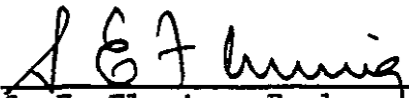
Claim denied.



I. M. Lieberman, Neutral-Chairman



L. C. Scherling, Carrier Member



S. E. Fleming, Employed Member

San Francisco, CA
April 14, 1983