PUBLIC LAW BOARD NO. 2439

Award No. 62
Case No. 62

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

STATEMENT OF CLAIM:

"1. That the Carrier violated the provisions of the Agreement when in letter dated March 1, 1982, it advised assistant water service foreman D. R. Rice to the effect that evidence adduced at a formal hearing held on February 9, 1982, established his responsibility in connection with having been absent without proper authority on specified dates, which action constitutes violation of Carrier's Rule M-810 and for reasons thereof, he was thereby suspended from service for a period of forty-five (45) days, said action being excessive, unduly harsh and in abuse of discretion.

2. That assistant water service foreman D. R. Rice now be compensated for all time lost from his assignment and that his personnel record be cleared of the alleged charges placed thereon."

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 Claimant had been employed by Carrier on May 26, 1979. The record indicates that for the period from September 1981 through the first half of January 1982 he had been absent from work for 63 days out of a total number of 73 working days. During that period of time, Carrier credited him with excuses for 13 of the days, which reduced the number of days out to 50. By letter dated January 19, 1982, Claimant was advised that he was removed from service pending a formal hearing because of alleged violations of the Carrier's absenteeism rule (Rule M-810). He was further charged with having been absent without leave January 1, 1982, through January 18, 1982. Following an investigative hearing, Claimant was advised that he had been found guilty of having been absent without proper authority on 25 specific days of the 50 with which he had originally been charged. He was

thereupon suspended from service for a period of 45 days effective January 19 to March 5, 1982.

Carrier notes that giving Claimant the benefit of the doubt he was absent for at least 25 out of a total of 73 working days for the period of the charges. On the days he was absent, according to Carrier, he rarely called in and had very few occasions on which a reason for his absence was given. Further, his excuse of medical problems was not persuasive, according to Carrier, since there was a lack of evidence to support such claims of a chronic bronchitis. Carrier indicates, further, that Claimant had been counseled in 1979 and in 1980 for the poor attendance record in those periods. Carrier maintains that the suspension of 32 working days assessed was reasonable and proper under the circumstances in view of Claimant's apparent habitual absenteeism pattern.

Petitioner argues, initially, that the discipline assessed in this instance gave the appearance that Carrier decided on a 45-day suspension to cover the excessive time which it took to handle the situation involving Claimant. Furthermore, the organization alleges, the infraction with which Claimant was charged was not one which would normally require removal from service pending a formal hearing. The Petitioner also indicates that Claimant had testified that he had missed time from his work due to certain family problems which ended in a divorce. The organization argues that the penalty in this instance was harsh and improper and Claimant was caused to suffer through loss of work because of his suspension from service pending the formal hearing and certainly the penalty was not in accordance with the nature of the offense.

The Board views the record of this case of being of sufficient clarity and definitiveness to justify the conclusion reached by Carrier that Claimant was guilty of the offense. There is no question that even granting Claimant benefit of the doubt his absenteeism rate was horrendous: in the vicinity of at least 34%. Such attendance need not be tolerated by any employer and it is particularly difficult for Carriers to accept in the railroad industry. Since Claimant had been counseled previously and since his record speaks for itself, the discipline in this instance was eminently justified and Petitioner's arguments to the contrary must be rejected.

AWARD

Claim denied.

I. M. Lieberman, Neutral-Chairman

L. C. Scherling, Carrier Member

C. F. Fosse, Employee Member

San Francisco, CA
October 12, 1983