

PUBLIC LAW BOARD NO. 2439

Award No. 68

Case No. 68

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 agreement when it dismissed Track Foreman R. H. Torres from its service for his alleged infraction of Carrier's Rule 'G', said action being excessive, unduly harsh and in abuse of discretion.
2. That Track Foreman R. H. Torres be reinstated to his rightful position with seniority and all other rights restored unimpaired, paid for all time lost, and the charges placed on his personal record 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 was hired by Carrier in 1949 and was promoted to the position of Track Foreman in July of 1953. The record indicates that on October 8, 1982, Carrier's District Maintenance of Way Manager went to claimant's work site and, based on his observations, concluded that claimant was under the influence of alcohol. He was offered the opportunity to have a blood test and indicated that he would do so after first going home, but never did get to the hospital for that purpose. Subsequently, claimant was removed from service and following an investigation was dismissed for violation of Carrier's Rule "G".

Carrier indicates that claimant was clearly, by virtue of the evidence at the hearing, guilty of the offense and that the discipline was eminently appropriate under the circumstances. Specifically, claimant had been disciplined twice for a similar charge and apparently had not taken the message to heart. The rules are clear and the discipline in this instance fit the crime, according to Carrier.

The Organization raises questions with respect to the visual inspection concerning the claimant's demeanor on the day in question. Furthermore, according to Petitioner, there was no hard evidence that the two bottles of beer removed from the Company's truck, which had been assigned to claimant, were indeed his. Based on the Petitioner's allegation of relatively flimsy evidence, Petitioner insists that the penalty of dismissal was much too severe under the circumstances.

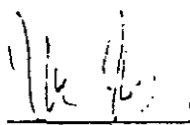
After careful evaluation of the record, the Board concludes that there was ample substantial proof of claimant's guilt of the charges in this case. There is no doubt but that he violated Rule "G". The only question herein is whether or not the penalty was appropriate. The Board is aware of the fact that claimant had some thirty-three years of service with Carrier at the time of his dismissal. After careful consideration, the Board is of the view that claimant should have his job back based upon a particular condition: he must enter and complete Carrier's employee rehabilitation program in order to be placed back on his job. He, of course, will not be compensated for lost pay if, indeed, he does qualify to return to his job. This decision is based solely on the fact that of the many years of faithful service by claimant and in terms of equity.

AWARD

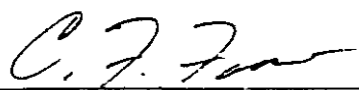
Claim sustained in part; claimant will be restored to his former position conditioned upon his entering and completing the employee rehabilitation program which is maintained by Carrier. He will not be compensated for time lost.

ORDER

Carrier will comply with the Award herein within thirty (30) days from the date hereof.


I. M. Lieberman, Neutral-Chairman


L. C. Scherling, Carrier Member


C. F. Foote, Employee Member