

PUBLIC LAW BOARD NO. 2439

Award No. 69
Case No. 69

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 January 4, 1983, it notified Track Foreman Rodger N. English to the effect that testimonies adduced at the formal hearing held December 15, 1982, established his responsibility for improperly placing yellow flag at approximately 3:01 P.M. on December 1, 1982, at M.P. 21.55, thereby constituting violation of Carrier's Rule 10 H and for reasons thereof he was thereby dismissed from the service of the Carrier, effective immediately, said action being excessive, unduly harsh, and in abuse of discretion.
2. That Track Foreman Rodger N. English now be reinstated to his rightful position on Extra Gang No. 37 with seniority and all other rights restored unimpaired, that he be paid for all time lost therefrom commencing December 6, 1982."

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 had been hired by Carrier in March of 1971 and some six months later became a Track Foreman. There is no dispute with respect to the incident involved in this matter. On December 1, 1982, claimant was instructed to place slow order flags to protect an area on the Westbound Main Track. The flags were set up by the claimant at the appropriate time and one of the flags, the most crucial one, the yellow flag, was set up at an improper location. Under Carrier's Rule 10 H (in pertinent part) the provision is:

"10 H: When the yellow flag is required, it will be displayed to the right of the track in the direction of approach, two miles from structure or track over which speed of trains must be restricted...."

In this instance, the flag had been erected at the commencement of that portion of the track over which the speed of trains was to be restricted, rather than two miles from that point as the rule provides. Claimant was notified of the irregularity by the District Maintenance of Way Manager, realized his error and immediately corrected the flag placement (this occurred on the following day). A hearing was held on December 15, 1982, and subsequently Carrier determined that claimant was guilty of improper placement of the flag and he was dismissed from the service of the Carrier on January 4, 1983.

Carrier argues that there is no doubt but that claimant violated the rule in question and that the particular violation was a serious one in this industry. The record indicates that the particular area of track could not have sustained speeds over 10 miles per hour and without the proper flag protection much higher speeds might have been attained by trains passing over that track. Carrier notes that there have been four other incidents in which claimant was disciplined for 3 relatively similar types of carelessness infractions. He had several other less serious violations on his record over his years of service. Based on the seriousness of the offense and the past record of claimant, he has clearly established himself as a careless employee, according to the Carrier, and the dismissal from service was appropriate.

Petitioner notes that claimant admitted openly to his error in the placement of the yellow flag and took immediate action to correct his mistake. Thus, the Organization does not question the fact that claimant was guilty of the offense, but the question of the circumstances also must be considered. At the time that the claimant made this serious error, he had two gangs which had been put together to supervise, and he was responsible for the flags for the entire group. Under the circumstances, according to Petitioner, Carrier administered excessive discipline for an occurrence which might have been avoided had not claimant's assignment been so heavy. Furthermore, according to the Organization, Carrier had a number of other alternatives with respect to discipline available to it but chose instead to administer this disproportionate penalty. The Organization argues that firing an individual for a mistake is clearly excessive and discriminatory.

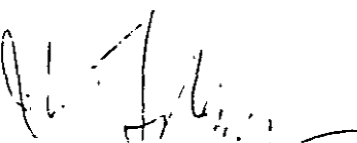
It is the Board's view that there is no doubt, of course, with respect to claimant's guilt. However, the penalty imposed by Carrier in this instance appears to be excessive. The Board notes that there should not be a termination as a result of a mistake made by an employee. If such mistakes continue, consideration for discipline of all types would be appropriate; however, in this instance disqualification and termination because of an error is particularly harsh and unnecessary essentially, also, because the mistake was openly admitted by the claimant and corrected. For that reason, it is the Board's view that claimant should be reinstated to his former position but without compensation for time lost. His time out of service is a more than adequate degree of penalty for the type of mistake he made.

AWARD

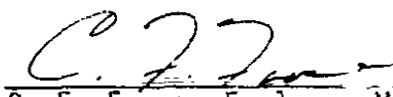
Claimant will be returned to service with all rights unimpaired but without compensation for time lost. His time out of service shall be considered to have been a disciplinary layoff.

ORDER

Carrier will comply with the award herein within thirty days from the date hereof.


I. M. Lieberman, Neutral Chairman


L. C. Scherling, Carrier Member


C. F. Foote, Employee Member

San Francisco, CA

March 27, 1984