

PUBLIC LAW BOARD NO. 2439

Award No. 74
Case No. 74

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the dismissal of J. A. Garcia was in violation of the current agreement being based on unproved charges, said action being capricious, arbitrary and in abuse of discretion.
2. Claimant shall now be reinstated to his former position with the Carrier with seniority and all other rights restored unimpaired and compensated for all wage loss suffered."

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, a spike puller, was returning to his headquarters with the rest of his gang after working near Cable, California, on November 22, 1982. The truck was on a private road leading to the main highway and ran over a bump and claimant alleged that the bump threw him against the side of the crew cab injuring his back. This occurred at approximately 2:55 P.M. The crew arrived back at their headquarters at approximately 3:10 P.M. and went off duty at 3:30. The alleged accident was not reported until the next morning prior to the starting time. Claimant was subsequently charged with carelessness, late reporting of an injury and false reporting of an alleged injury. Following an investigation, he was found guilty of the charges and dismissed from service.

The record indicates that the carelessness charge was attributed to claimant not wearing a seat belt while riding in the vehicle. There was no denial of this fact but the defense was raised that other employees also were not wearing seat belts. With respect to the late reporting of the incident, claimant admitted

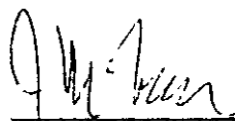
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that it was not reported until the following day contrary to the Carrier's requirements (which he was well aware of), but claims that during the confusion of quitting time he could not find his foreman. The record indicates that the general foreman was on the property until 3:50 P.M. on the day in question and there was at least 55 minutes during which the incident could have been reported. Concerning the injury itself, Carrier alleges that there were serious questions as to whether any injury had occurred. Carrier believes that claimant simply did not want to do any more work that afternoon and claimed the injury. The record indicates that he had had two previous work related injuries, both to his back, in the past. To support its position, Carrier indicates that the testimony at the hearing involving other members of the crew indicated that none of them were aware of any kind of jolt in the truck which would have been sufficient to cause any kind of problem for anyone. It is claimant alone who testifies that the jolt was sufficient to throw him against the side of the truck injuring his back.

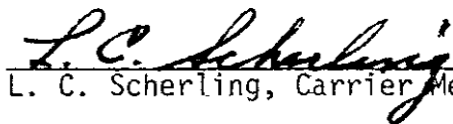
As the Board views it, there was substantial evidence in the record of the investigation to support Carrier's position that claimant was guilty of the charges. Under the circumstances and in view of the seriousness of the derelictions on the part of claimant, the Board has no choice but to agree that Carrier was correct and had no alternative but to dismiss claimant. The claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



L. C. Scherling, Carrier Member



C. F. Foote, Employee Member

San Francisco, CA

October 3, 1984