

PUBLIC LAW BOARD NO. 2439

Award No. 76
Case No. 76

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

- "1. That the dismissal of Mr. M. P. Ayala was in violation of the agreement and based on unproven charges, said action being wholly disproportionate and in abuse of discretion.
2. That Claimant M. P. Ayala be returned to the service of the Southern Pacific Transportation Company with seniority and all other rights restored unimpaired and that he be 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 was employed by Carrier in 1973 and was a track laborer at the time of the incident herein. On October 23, 1983, claimant entered the Maintenance of Way Office and asked permission from the Maintenance of Way Clerk, Mrs. Fagan, to use the telephone to call the Regional Maintenance of Way Manager. In the midst of the conversation, another employee approached the clerk looking for claimant and told her the gang was waiting for him. Mrs. Fagan went to the room where claimant was using the telephone and informed him of that fact while he was on the telephone. Apparently the Maintenance of Way Manager hung up at that point. Claimant re-entered the room where the clerk was standing and said to her (while she was conducting business with an outside businessman): "Mind your own fucking business." He then walked out of the office, slamming the door. This incident caused Carrier to file charges against the claimant which was followed by an investigation and his being found guilty of improper conduct. He was discharged, triggering this dispute.

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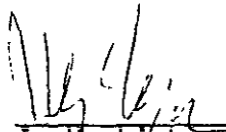
Claimant denies using the vulgar language in question but the Hearing Officer found that the Carrier's witnesses were credible and decided that he did, indeed, use the terms indicated. This Board obviously must abide by the credibility finding of the Hearing Officer. The sole question to be determined by this Board is whether the penalty of discharge, given the offense, was appropriate under all the circumstances. Claimant had not been disciplined previously but had been counseled on several occasions and Carrier did not consider him to be an exemplary employee by any means. It is this Board's view, however, in view of the entire record of this employee, that dismissal was harsh and arbitrary under all the circumstances. There is no excuse for the type of language used by claimant. However, that discipline, in view of his ten years of service and otherwise lack of disciplinary action against him, is inappropriate and arbitrary. For the reason indicated, claimant will be reinstated to his former position but without compensation for time lost as the penalty for his improper action.


AWARD

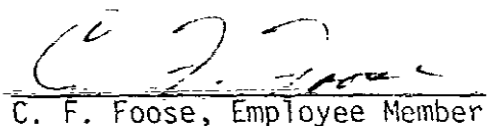
Claim sustained in part; claimant will be reinstated to his former position with all rights unimpaired but without compensation for time lost.

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

San Francisco, CA

October 3, 1984