

PUBLIC LAW BOARD NO. 2439

Award No. 84
Case No. 84

PARTIES
TO
DISPUTE

Southern Pacific Transportation Company
and
Brotherhood of Maintenance of Way Employees

STATEMENT
OF CLAIM

- "1. That the Carrier's decision to suspend Welding Foreman, Mr. D. W. Rosendahl, for a period of sixty (60) days was without just and sufficient cause, punitive and in violation of the current agreement.
2. That the claimant now be compensated for all wage loss suffered and that his record be cleared of all charges."

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 herein was the Foreman of Welding Gang No. 78. This gang was involved also under related circumstances to the problems dealt with in Award No. 83 of this Board. At the time of the incidents herein, the gang was working fourteen consecutive days with seven rest days. The gang was scheduled to have its seven rest days begin on April 16, 1984. At the completion of the shift on April 12, 1984, claimant was instructed by his supervisor to report on the next day to a new work location in Welton, Arizona, since there was an urgent need for welding work at that location, according to the Regional Welding Supervisor. He was instructed to report to the District Manager at Welton during the working hours of April 13, 1984. Claimant did arrive in Welton on Friday, April 13, and informed the Foreman in the office, since there apparently was no work to be done he thought, that he would not work on April 14 and 15 and since he was taking his rest period, would report back to work on April 23, 1984. He did not contact the District Manager. Claimant also claimed work for himself and his entire gang for April 14 and 15, 1984, although they did not work on those days. Subsequently claimant was charged with violating

Carrier's rules, found guilty of absenting himself and other employees of his gang from duty on April 14 and 15 without proper authority and claiming payment on his time rolls for hours which were not worked. He was assessed a sixty-day suspension for this transgression.

The record of this matter reveals substantial confusion concerning the role of the supervisor with respect to claimant. For example, claimant indicates that the supervisor told him that even if the men did not work on the weekend, they would be paid for that time. The supervisor does not acknowledge making that statement. Nevertheless, it is apparent that claimant was clearly guilty of not following instructions in reporting to the District Manager on April 13. Furthermore, he clearly misstated the time claims for himself and his gang on the time roll which he submitted. This action from experienced foremen is clearly not acceptable. It must be noted that claimant indicates that he made an error which he will carefully refrain from doing in the future and should have indicated that the men did not work on that day on the time roll. He did not return from his week of rest in time to make the correction. Also he had no relationship or contact with his supervisor immediately following his return from his rest week concerning the alleged infraction until sometime later.

On balance, after examination of the entire record of this matter, it is apparent that claimant was guilty of misconduct on the day in question. He did not report as instructed and also made a totally incorrect entry on the time rolls. However, the supervisor must bear some culpability for the difficulties which claimant experienced. Therefore, it is the Board's view that the penalty assessed in this instance was too harsh under the peculiar circumstances. It will be reduced to a thirty-day suspension.

AWARD

Claim sustained in part; the penalty will be reduced to a thirty (30) day suspension and claimant made whole for all losses sustained in excess of that number of days. The remainder of the claim is denied.

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. Foose, Employee Member

San Francisco, California

August **27**, 1985