

PUBLIC LAW BOARD NO. 2439

Award No. 88  
Case No. 88

PARTIES  
TO  
DISPUTE

Southern Pacific Transportation Company  
and  
Brotherhood of Maintenance of Way Employees

STATEMENT  
OF CLAIM

- "1. That the Carrier's decision to dismiss Track Laborer, Mr. R. Johnson, from its service on May 17, 1984, was without just and sufficient cause and in abuse of discretion.
2. Claimant R. Johnson will now be reinstated to his former position with seniority and all other rights restored unimpaired and compensated for all wage loss suffered beginning on March 8, 1984 forward."

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 track laborer, was employed by the Carrier on February 24, 1955. He was employed in the Track Subdepartment with headquarters at Oakridge, Oregon. On March 8, 1984, claimant was sent home from work as a result of observations by his supervisor who believed that he was under the influence of alcohol. He did not report for work on March 9, 1984. Subsequently, he was cited for investigation, being charged with being under the influence of alcohol and also unauthorized absence on March 9, 1984. Following the investigation, the claimant was dismissed from service.

The transcript of the investigation reveals substantial evidence that claimant was under the influence of alcohol on March 8. In addition, his own testimony

indicated that he had been drinking until between 1:00 and 2:00 A.M. on the morning of March 8. Thus, there is no doubt but that Carrier properly found claimant guilty of the charge of violation of Rule "G". The record also indicates that subsequent to being removed from service, claimant was under the guidance of the Employee Assistance Counselor on the Oregon Division but left the program before completion.

It is the Board's view that in the light of claimant's almost thirty years of service, that dismissal in this instance was a harsh and arbitrary penalty for his infraction. While not minimizing the importance of abiding by Carrier's rules with respect to alcoholic beverages, it is clear that there are some circumstances under which a lesser penalty would be appropriate. This is one of them. It is the Board's view that claimant should be reinstated to service with all rights unimpaired but without compensation for time lost. This reinstatement, however, must be conditioned on his participation in the Employee Assistance Program.

#### AWARD

Claim sustained in part; claimant shall forthwith be reinstated to his former position with all rights unimpaired but without compensation for time lost. His return to work shall be conditioned upon his participation thereafter in the Employee Assistance Program until completion.

#### ORDER

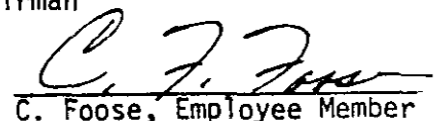
Carrier will comply with the award herein within thirty (30) days from the date hereof.



I. M. Lieberman, Neutral-Chairman



L. C. Scherling, Carrier Member



C. Foote, Employee Member

San Francisco, California

August 21, 1985