

PUBLIC LAW BOARD NO. 2439

Award No. 93

Case No. 93

PARTIES
TO
DISPUTE

Southern Pacific Transportation Company
and
Brotherhood of Maintenance of Way Employees

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the current agreement when it withheld Track Laborer Robert J. Rutherford from service on four (4) days during December 1983. Said action constituted discipline being assessed without claimant being a fair and impartial hearing.
2. The claimant shall now be made whole for all time lost in the amount of fifty-four (54) hours at the straight-time rate of pay."

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.

At the time in question in this dispute claimant was working on the regional tie gang. During his duty tour on December 22, claimant was instructed to put on rail anti-creepers. It appears that while performing his task on that date, claimant re-injured a personal injury on one of his fingers and, because of an infection, the finger began to drain and cause pain. Claimant requested and was granted permission from his foreman to return to his trailer for the purpose of treating his sore finger. The foreman did not accord claimant any vehicle and he was required to walk for approximately two to three hours to return to the trailer. According to Carrier's records, later in the evening of December 22, claimant told his foreman that he still could not swing a hammer for the work on December 23. Nevertheless, the record indicates that on December 23 claimant reported to work at his usual starting time. At that

time he was informed by his foreman that he would not be allowed to work that day and should not report back to work for the next three work days. As a result of this action, in addition to the days of work which claimant lost, he also did not receive any Christmas pay.

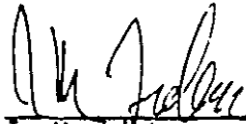
An examination of the record of this dispute reveals that there is culpability on the part of both claimant and his foreman for the absence and the loss of pay. It is apparent that claimant did not secure medical help and did not indicate that his hand was sufficiently well for him to work subsequent to December 23, nor did he appear for work on any of those days. On the other hand, the foreman arbitrarily refused to permit claimant to work for not only December 22 and 23, but also three days following Christmas. This appears to be arbitrary on the foreman's part since he was not aware of whether indeed claimant could work on those days and, indeed, appears to be punitive. On balance, therefore, and because of the shared responsibility for the losses sustained by claimant, it is this Board's view that the Carrier's decision of denying claimant the pay for the entire period and the work opportunity was incorrect. Therefore, the claim will be sustained in part. Claimant will be paid forty hours pay for the time lost and holiday pay lost for the period in question.

AWARD

Claim sustained in part; claimant will be made whole to the extent of being paid forty (40) hours for time lost during the period in question. 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. Fooshe, Employee Member

San Francisco, California

August **27**, 1985