

PUBLIC LAW BOARD NO. 3558

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SOUTHERN PACIFIC TRANSPORTATION CO. (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of Southern Pacific Track Foreman A. S. Pena for all time lost to commence June 10, 1985, and on a continuing basis, with seniority, vacation and all other benefits restored intact and with the charge letter of June 10, 1985, removed from his record." (MW-85-99)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Claimant was discharged from Carrier's service as the result of the Carrier having determined Claimant to be guilty of burglarizing a company truck.

Although it is evident, as the Organization argues, that the company hearing did not fully establish the basis for the charge, the fact remains the hearing produced sufficient testimony for the Carrier to have concluded that Claimant was indeed guilty as charged. In this respect, it must be borne in mind that it was not necessary, as in a criminal proceeding in a court of law, that the company have substantiated guilt beyond reasonable doubt. Thus, that the Carrier elected to rely on the testimony of its Lieutenant of Police as pertained to his investigation into this matter and the testimony of others, while withholding testimony of a purported eye witness to certain aspects of the burglary because the incident was also being pursued in a court of law, may not necessarily be held to have demonstrated a lack of support for the charge. Essentially, it represented an election of remedies and a determination by the Carrier to proceed with the company hearing at the risk of a certain peril if the criminal action was not to be sustained.

In this latter regard, and while this Board recognizes that such action came four months after the Carrier had suspended Claimant from service on June 10, 1985 and two months after it had formally dismissed him from service on August 8, 1985, we think it


appropriate consideration be given to the fact that Claimant did enter a plea of guilt to the charges of burglary of a motor vehicle in Federal District Court on October 8, 1985, and for which he was sentenced to three years suspended probation and fined \$500 plus \$66 court cost.

It is unfortunate that an employee with 28 years of apparently heretofore good service would be found guilty of such a major offense. However, Claimant committed a serious violation of rules of conduct and this Board may not therefore hold that the discipline be set aside or reduced as being excessive or unreasonable.

AWARD:

Claim denied.


Robert E. Peterson, Chairman
and Neutral Member


C. B. Goyne
Carrier Member


M. A. Christie
Organization Member

Bronson, MO
May 19, 1986