

SPECIAL BOARD OF ADJUSTMENT NO. 1127

**AWARD No. 1
CASE No. 1**

**PARTIES TO
THE DISPUTE:** Brotherhood of Maintenance of Way Employees

vs.

**Union Pacific Railroad Company
(Former Southern Pacific Transportation Company-Western Lines)**

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained.

DATE: August 15, 2000

DESCRIPTION OF CLAIM:

Claimant K. W. Mack was charged with failing to report for and perform any work on January 27 and February 15, 2000 while reporting that he worked for eight hours of straight time on each day in Carrier's GMS system. He held a track welder position at the time. The charge was based on Rule 1.6(4) effective April 10, 1994, which prohibited dishonesty.

Following investigation held March 15, 2000, Claimant was assessed Level Five disciplinary penalty and dismissed from Carrier's service. According to the notice of discipline dated March 29, 2000, Claimant was found guilty of the charge for both days. The notice was corrected on April 10, 2000 to clarify that Claimant was found guilty of the charge for only January 27, 2000.

The Claim in this dispute seeks to overturn the discipline, restore Claimant to his former employment with seniority and other rights unimpaired, and make Claimant whole for all losses.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The Board does not find the record of the investigation hearing to contain substantial evidence in support of the charge. The evidence against Claimant rests primarily on the testimony of Manager of Track Maintenance Sanchez and secondarily upon that of Welder Helper Carrasco. Their accounts of the events surrounding January 27, 2000 were considerably less than vivid. In addition, however, Sanchez' credibility was significantly impeached by the complete turnaround in his testimony concerning his location on February 15th. Moreover, according to the testimony of Sanchez and Carrasco, Claimant missed work on January 27th due to the need to appear in court. But from the

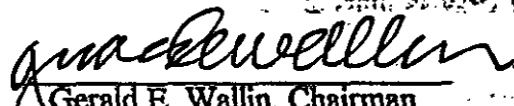
documentary evidence (Exhibit C to the transcript), such a court appearance would have been impossible on that date. The first traffic citation was issued on December 10, 1999 and required Claimant to appear in court *on or before January 20, 2000* if he chose to contest the matter. January 27th was well after that deadline. The second citation was not issued *until February 3, 2000* and specified March 6, 2000 as the court appearance deadline.

In addition to the lack of substantial credible evidence in support of the charge, there is no evidence to refute Claimant's testimony that he did report for work on January 27th at Lompoc, California at the regular time and that he busied himself performing yard work waiting for Carrasco to meet him as he had done the previous four days.

Given the state of the evidentiary record, Carrier's discipline must be set aside. The Claim is sustained as requested by the Organization in its closing statement at the investigation hearing. Claimant must be reinstated immediately and made whole for all losses resulting from Carrier's improper disciplinary action.

AWARD:

The Claim is sustained in accordance with the findings. Carrier is directed to comply with this award on or before September 1, 2000.


Gerald E. Wallin, Chairman
and Neutral Member