

PUBLIC LAW BOARD NO. 5396

Parties
to the
Dispute

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

and

SOUTHERN PACIFIC TRANSPORTATION
COMPANY
(Western Lines)

PLB Case No. 16

NMB Case No. 16

STATEMENT OF CLAIM

1. That the Carrier violated the provisions of the current Agreement when it dismissed Utilities Robert K. Hodgson on unproven charges. Said action being extreme, unduly harsh and in abuse of discretion.
2. That the Carrier now reinstate Claimant to his former Carrier position with seniority and all other rights restored unimpaired, with pay for all loss suffered, and his record cleared of all charges.

FINDINGS

By letter dated August 17, 1991, Claimant was called to an investigation

...in connection with your alleged dishonesty, indifference to duty and willful disregard or negligence affecting the interests of the Company when you allegedly used the Company's credit and name to purchase and transport, on

head lamp. In attempting to right the machine, however, \$7,516.92 worth of damage was incurred.

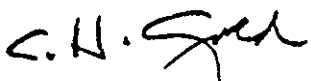
Claimant was charged with the failure to control properly the equipment in his charge. Following an investigation, he was disqualified from working as a Class No. 17 Tractor-Bulldozer Operator.

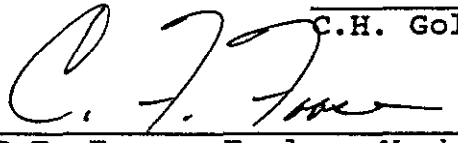
Upon a complete review of the record, including the transcript of the hearing, this Board does not find sufficient evidence to sustain the charge against Claimant. It does not appear that he was operating in a careless or negligent manner (in violation of Rule 607) or that he was exercising insufficient care to avoid injury or damage (as per Rule 1.1.37). Rather, it appears that a combination of factors, including a deflated tire, may have contributed to the accident.

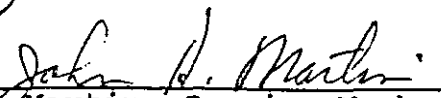
For all of these reasons, the claim must be sustained.

AWARD

Claim sustained.


C.H. Gold, Neutral Chairman


C.F. Foose, Employee Member


J. Martin, Carrier Member

2-28-94
Date of Approval