

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. 18

NMB Case No. 18

STATEMENT OF CLAIM

1. That the Carrier violated the current Agreement when it dismissed Foreman D.E. White based 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

Claimant, a Foreman with a seniority date of March 4, 1974, was called to an investigation in connection with the charge of failing to return a switch to its proper position "after lining it for repairs which resulted in one derailment of the 01EUGJM17 at Hosley, Oregon, MP543, on September

17, 1991." The derailment resulted in the death of one person, the injury of another, and approximately \$2 million in property damage. Carrier concluded that Claimant was culpable in regard to the switch and that he was dishonest in failing to report that he and a Laborer Operator had left the switch improperly lined. He was consequently terminated from service.

Claimant alleged that he had not lined the switch while installing a switch plate. The Laborer Operator initially supported this statement, but later said that while not seeing White throw the switch, at one point he observed a "movement." After the derailment, the switch was found to be unlocked and lined for the spur.

Upon a complete review of the record, this Board finds strong circumstantial evidence pointing to Claimant's involvement in the placement of the switch, despite the presence of others in the area. By his own acknowledgement, he failed to check the switch after completing his repair. There is no doubt that the disaster that occurred was of monumental proportion.

By the same token, however, we note that Claimant is a long-term employe with an unblemished work record. Consequently, his total separation from service cannot be

endorsed. His time withheld from employment should be sufficient to place him on notice for the need to take all necessary precautions in conjunction with his work.

AWARD

Claim sustained in part and denied in part. Claimant is returned to service with all seniority and other rights intact, but without backpay. His time withheld from service shall appear on his record as a Suspension.

C.H. Gold
C.H. Gold, Neutral Chairman

C.F. Foose
C.F. Foose, Employee Member

John H. Martin
J. Martin, Carrier Member

2-28-94
Date of Approval