

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. 19
NMB Case No. 19

STATEMENT OF CLAIM

1. That the Carrier violated the current Agreement when it dismissed Laborer Operator R.D. Gonzales 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 R.D. Gonzales was terminated from service for his alleged involvement in the same incident that resulted in the discharge of Foreman D.E. White. (See NMB Case No. 18 of this Public Law Board.) In that instance, we found strong circumstantial evidence to support Carrier's charge.

In the present case, while recognizing that Laborer Operator Gonzales was working under the personal supervision of Foreman White (per Rule 666), we also believe that he had an independent responsibility to check the switch, which he acknowledges he failed to do. Consequently, the level of discipline assessed in NMB Case No. 18 is appropriate in this instance.

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 W. Martin

J. Martin, Carrier Member

2-28-94

Date of Approval