

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. 2

NMB Case No. 2

STATEMENT OF CLAIM

1. That the Carrier violated the current Agreement when it dismissed Broom Operator S.W. Chee. Said action being excessive, 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

On October 3, 1990, Claimant S.W. Chee was assigned as a Broom Operator on Surfacing Gang S-22 near Sacate, California. At approximately 12:40 PM, the Broom that he was operating ran into a Ballast Regulator, causing \$14,000.

worth of damage to the two machines and injuring the Regulator Operator, A. Moreno.

At an investigation held on November 27, 1990, Claimant alleged that because of grease on the rails, he was unable to stop. Further, Mr. Moreno had halted his machine in order to change gears and had failed to signal that he was doing so. Claimant was charged with the violation of

Southern Pacific Transportation Company,
Rules and Instructions for the Maintenance
of Way and Structures, Rule 2.13.3:

2.13.3 - Equipment shall not be operated in a manner to endanger life, limb or property. No equipment shall be set in motion until it is known that the way is clear.

and Rule 2.13.32:

2.13.32 - Track machines must be operated at a safe speed at all times, subject to conditions, especially on grades, both while working and while running light.

While traveling, machines must be separated from other machines in such a way as to avoid any undesired contact between any two machines.

and Safety Rule, Governing Employees of the Maintenance of Way and Structures Department, Safety Rule 5031:

Rule 5031: Employees handling or operating moving equipment must be prepared to stop short of persons or objects.

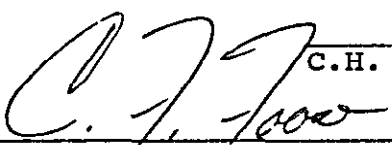
Claimant was found guilty as charged and was terminated from employment on December 7, 1990. (He has subsequently been returned to service by Carrier.)


This Board has reviewed the entire record of the case, including the transcript of the investigation, and finds that sufficient evidence was brought forth by Carrier to support the charges against him. Claimant did operate in an unsafe manner, given the condition of the track and the terrain. We also find that he was granted all procedural rights guaranteed by Agreement in the handling of his case.

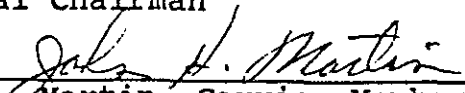
Claimant's past record includes two prior safety violations, for which he received a ten-and thirty-day Suspension. While we agree that he is deserving of discipline for recurring safety violations, we too believe that final separation from service is excessive. Thus, we endorse his reinstatement to service, but without backpay and on a last-chance basis.

AWARD

Claim sustained in part and denied in part. Claimant's return to service is without backpay. His seniority and other rights are restored. He is returned on a last-chance basis.


C.F. Foote, Employee Member


C.H. Gold, Neutral Chairman


J. Martin, Carrier Member

2-28-94
Date of Approval