

PUBLIC LAW BOARD NO. 5396

Parties
to the
Dispute

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

vs.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY
(Western Lines)

NMB Case No. 29

PLB Case No. 29

STATEMENT OF CLAIM

1. That the Carrier violated the provisions of the current Agreement when it dismissed Track Laborer C.J. Moreno. Said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier now reinstate the Claimant to his former Carrier position with seniority and all other rights restored unimpaired, with pay for all loss suffered and his record shall be cleared of all charges.

FINDINGS

Claimant C.J. Moreno was notified by letter dated March 10, 1994, that because he had been absent from duty without authority, his employment and seniority with Carrier had been terminated. In accordance with his rights, he requested a hearing. After one postponement, the hearing was held on April 30, 1994.

At the hearing, evidence was introduced to show that the last day of work for Claimant was February 8, 1994. He bid a position on the T-3 Tie Gang and was to start work there on March 7. He did not appear.


The Organization argues that Carrier failed to consider Claimant's psychological, family, and financial problems. He was unable to work because of them and job-related stress. He has sought help from EAP.

This Board has no reason to dispute the contention that Claimant was experiencing major problems. The real question becomes whether Carrier has expended a reasonable effort in dealing with him. Claimant's record reveals thirteen PR memos and three prior Suspensions (one for ten and two for thirty days) for attendance problems. It is clear that Carrier has sought to impress upon him the need to improve his record.

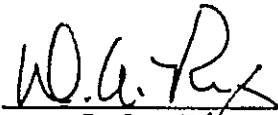
Carrier appears to have made an effort to work with Claimant. An employee who effectively abandons his position, however, cannot expect more.

AWARD

Claim denied.


C.H. Gold,
Neutral Chairman


For C.F. Foote,
Employee Member


D.A. Ring,
Carrier Member

1-7-98
Date of Approval