

PUBLIC LAW BOARD NO. 5396

Parties
to the
Dispute

:
:
: BROTHERHOOD OF MAINTENANCE
: OF WAY EMPLOYES
:
: and
:
: SOUTHERN PACIFIC TRANSPORTATION
: COMPANY
: (Western Lines)
:
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: PLB Case No. 3
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: NMB Case No. 3
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STATEMENT OF CLAIM

1. That the Carrier violated the current Agreement when it dismissed Track Laborer R. Ramone. 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

Claimant, Track Laborer Ronald Ramone, had a seniority date of May 7, 1986. He was called to an investigation on January 7, 1991,

...to develop the facts and place responsibility, if any, in connection with your alleged absence from duty without proper authority and failing to protect your employment on November 5, 1990 and all subsequent work days.

You are charged with responsibility which may involve violation of Rule 604, that part of paragraph one, reading:

"604. DUTY-REPORTING OR ABSENCE:
Employees must report for duty at the designated time and place. They must not absent themselves from duty...without proper authority."

and Rule 604, second paragraph, reading:

"continued failure by employees to protect their employment shall be sufficient cause for dismissal."

of Rules and Regulations for the Government of Maintenance of Way Employees, Southern Pacific Transportation Company.

Following the investigation on January 18, 1991, Claimant was found to have violated Rule 604 and was discharged from service.

This Board has reviewed the entire record of this case and finds that certain facts are not in dispute. Claimant was AWOL on November 5 through November 28, 1990, at which point he was terminated from service. This absence followed upon a history of poor attendance. Claimant was first

counselled on Rule 604 in February 1987. Thereafter, he received forty-five demerits and a Suspension for absenteeism. In effect, by absenting himself without proper authority during the most recent incident, he effectively abandoned his job.

Claimant was aware of Carrier's Employee Assistance Program and could have availed himself of its services at any time. There comes a point, however, when an employer need no longer maintain on its rolls an employee who is unwilling to make himself available for work with any degree of regularity.

Under the facts of this case, Claimant's termination was appropriate.

AWARD

Claim denied.

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

C.F. Foote
C.F. Foote, Employee Member

K.E. Johnson
K.E. Johnson, Carrier Member

8-29-94
Date of Approval