

JR. VICE PRESIDENT

NOV 24 1997

APPROVAL

PUBLIC LAW BOARD NO. 5396

Parties
to the
Dispute

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

vs.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY
(Western Lines)

PLB Case No. 30

NMB Case No. 30

STATEMENT OF CLAIM

- (1) Carrier violated the Agreement when on July 11, 1994, J.Z. Martinez, SSN 550-88-7867, was suspended from the service of the Southern Pacific Lines for five (5) days.
- (2) That Mr. J.Z. Martinez be compensated for the five (5) days of loss of work and that his record be cleared of all charges.

FINDINGS

Claimant J.Z. Martinez was assessed a five-day Suspension for having violated Rules 1844 and 1006 of the Safety and General Book of Rules when he allegedly operated a ground throw switch in an unsafe manner on May 21, 1994, resulting in a personal injury.

Claimant apparently was hit in the left knee when a switch handle came up and struck him. He alleged that he was startled when the Trainmaster yelled at him from behind while he was throwing the switch.

Carrier's witness suggested that Claimant had pushed the switch handle part of the way down and was holding the remainder of the arc way of the handle down with his foot when the incident occurred.

Carrier argues that whether Claimant put his foot on the handle is irrelevant. His knee was positioned in such a way as to place it in the arc of travel of the switch handle. Rule 1844 states in pertinent part that employes are to position themselves in such a manner that their bodies are clear of the arc or line of travel of the switch lever.

It appears to this Board that an unfortunate series of events caused the injury to Claimant. While he was partially at fault, he clearly is not deserving of a five-day Suspension. A Letter of Reprimand should be sufficient to place him on notice of the need to take more care in the future.

Claimant was afforded a full and fair hearing. The discipline assessed is to be modified in accordance with these Findings.

AWARD

Claim sustained in part and denied in part. Within thirty days of the approval of this Award, Claimant's Suspension is to be reduced to a Letter of Reprimand and he is to be compensated accordingly.

CH Gold

C.H. Gold,
Neutral Chairman

C.F. Foose

C.F. Foose,
Employee Member

W.A. Ring

D.A. Ring,
Carrier Member

12-1-97

Date of Approval