

JR. VICE PRESIDENT
NOV 24 1997
LABOR RELATIONS

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. 31

NMB Case No. 31

STATEMENT OF CLAIM

1. That the Carrier violated the provisions of the current Agreement when it dismissed End Loader Operator J.E. Madrigal. 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 shall be cleared of all charges.

FINDINGS

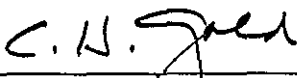
Following an investigation conducted on September 15, 1994, into Claimant's alleged misuse of a Company gas credit card, he was terminated from service. Mr. Madrigal, who was assigned as an end loader operator, had a seniority date of January 8, 1974. He acknowledged that he had used the card to fuel a truck

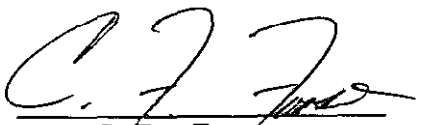
borrowed from a friend. Carrier points out that Claimant violated rules 1.6 and 1.25, which prohibit dishonesty and misuse of Company credit cards. The Organization argues that termination was unduly harsh and that other similarly situated employees have received lesser levels of discipline.

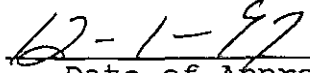
This Board in no way condones what Claimant did. While theft of this nature is clearly a dismissable offense, the special facts of this case dictate a result other than permanent separation from service. Claimant is consequently returned to employment on a last-chance basis with no backpay. He should recognize the gravity of his offense and be aware that a significant infraction of any Carrier rule in the future will most certainly cause a final loss of his job.

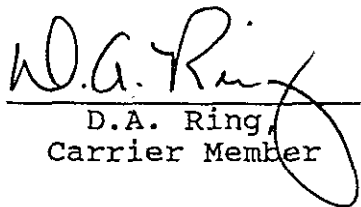
AWARD

Claim sustained in part and denied in part. Claimant is returned to service on a last-chance basis with seniority and all other rights intact, but with no backpay.


C.H. Gold,
Neutral Chairman


C.F. Foose,
Employee Member


Date of Approval


D.A. Ring,
Carrier Member