

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. 40

NMB Case No. 40

STATEMENT OF CLAIM

1. That the Carrier violated the provisions of the current Agreement when it dismissed Grinder Operator K.D. Riley. 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 May 8, 1995, Claimant K.D. Riley was sent a Notice of Investigation:

You are hereby notified to be present at the Tucson yard office, 1255 S. Campbell Avenue, Tucson, Arizona, at 9:00 AM rail-

road time, Monday, May 22, 1995, for a formal hearing to develop the facts and place responsibility, if any, in connection with your alleged theft of stereo equipment from the Roadmaster's office at Willcox, Arizona, about April 12, 1995.

Following the hearing, the charge was sustained and Claimant was dismissed from service.

Claimant was found to be in possession of three Sony CD player stereos in his truck when stopped on April 12, 1995, by the police for a driving violation. He was held in jail for twenty-three days under suspicion of breaking and entering the Roadmaster's office and for possession of stolen property.

At Carrier's investigation, Claimant alleged that, when stopped he was in the process of taking the stereos, which he had found, to his Foreman, as he had in the case of three other stereos. Carrier produced evidence to show that ten stereos, which had been taken off of a train car, had been locked in the storeroom of the Roadmaster's office on the night of April 12. The back door of the office was found ajar. Before being stopped by the police, Claimant had given one stereo away and had left three others with Foreman L.S. Sanchez, Jr., on the west side of town. Carrier questioned why, if Claimant was taking the other three stereos to Foreman Sanchez, as he claimed, he was driving

east on the east side of town, when Sanchez was in fact on the west side.

This Board has reviewed the record of this case, including the transcript of the investigation. There is no doubt that there was considerable conflicting testimony at the hearing. In the end, however, Claimant's contention that he had simply found both the keys to the Roadmaster's office and the stereos was not believable. At the same time, the fact that he had given one stereo away belies his assertion that he was intending to return the items.

Carrier is correct when it argues that theft is a dismissable offense. Claimant was given a full and fair hearing. The evidence against him was compelling. This Board has no other option but to deny his claim.

AWARD

Claim denied.

C.F. Foose

C.F. Foose,
Employee Member

12-29-97
Date of Approval

CH Gold
C.H. Gold,
Neutral Chairman

W.A. Ring
D.A. Ring,
Carrier Member