

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. 42

NMB Case No. 42

STATEMENT OF CLAIM

1. That the Carrier violated the provisions of the current Agreement when it dismissed Ballast Regulator Operator R.R. Ramos. 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

Ballast Regulator Operator R.R. Ramos was dismissed from service following an investigation held on August 25, 1995, into the charge that he was responsible for failing to control the movement of a Ballast Regulator on August 11. After Claimant's

Ballast Regulator struck and damaged a Double Broom near Los Tanos, New Mexico, he was tested for drugs and alcohol. There was a positive alcohol screen. Carrier also concluded that Claimant had failed to abide by the terms of a reinstatement agreement dated March 7, 1994. He had been returned to his position at that time after having been terminated for another positive alcohol test. Carrier further determined that he had not reported the present incident in a timely manner.

This Board finds that Claimant was granted all procedural rights guaranteed to him by Agreement in conjunction with the levelling of this charge. The evidence adduced at the investigation was clear and compelling. Claimant's Regulator struck the Double Broom, which was not moving, causing approximately \$12,000 in damage. The visibility was clear. His brakes were in operating order. Claimant was found to have alcohol in his system. He did not report the accident until some three and a half hours after it occurred. His alcohol consumption was a clear violation of his reinstatement agreement.

Under all of the facts of this case, it cannot be concluded that Carrier was arbitrary or capricious in the assessment of

this discipline or that the discipline itself was unduly harsh in light of the proven infraction.

AWARD

Claim denied.

CH Gold
C.H. Gold,
Neutral Chairman

C.F. Foose
C.F. Foose,
Employee Member

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

12-29-97
Date of Approval