

PUBLIC LAW BOARD NO. 5396

Parties
to the
Dispute

:	:	:
:	:	:
:	BROTHERHOOD OF MAINTENANCE	:
:	OF WAY EMPLOYES	:
:	vs.	:
:	:	:
:	UNION PACIFIC TRANSPORTATION	:
:	COMPANY	:
:	(former Southern Pacific	:
:	Transportation Company, Western Lines)	:
:	:	:
:	:	:

PLB Case No. 48

NMB Case No. 48

STATEMENT OF CLAIM

1. The dismissal of Track Welder D.L. Stoker was in violation of the Agreement, based on unproven charges and an abuse of discretion.
2. Claimant Stoker must be reinstated to his previous assignment with his seniority and all other contractual rights restored unimpaired; he must be compensated for all wage losses incurred since his wrongful dismissal; and all charges and reference to this incident must be expunged from his personal record.

FINDINGS

Claimant D.L. Stoker was charged with failure to promptly report to the proper manager for a personal injury he alleged he incurred on July 22, 1996. Following an investigation held on

August 16, 1996, the charge was sustained and Claimant was terminated from service.

The Organization suggests that there was miscommunication between Claimant and the Roadmaster on the date of the injury. Claimant believed that he reported his back injury to Roadmaster Gonzales before leaving the property, while the Roadmaster understood Claimant to say only that he was not feeling good. Carrier contends that the injury was not actually reported until August 5, 1996. No accident report was completed prior to that date.

There is some question in the record as to whether Claimant complained the week before the accident about a sore back. Thus, Carrier argues that it had no way of knowing whether this was an on-the-job or off-the-job injury.

In the final analysis, this Board must conclude that Claimant was negligent in failing to ensure that a Carrier official was fully aware of what allegedly had transpired and completing a CS-2611 form in a timely manner. If he was unable to do so on the date of the incident due to pain, he could have at least done so shortly thereafter before going on vacation.

Because of Claimant's long years of service, this Board directs that he be returned to service, assuming that he is able to pass a physical examination. Claimant should be aware in the

future of the need to report all on-the-job injuries promptly in both oral and written form.

AWARD

Claim sustained in part and denied in part. Claimant is returned to service with seniority and all other rights intact, but without backpay, pending his ability to pass a return-to-work physical examination.



C.H. Gold,
Neutral Chairman



R.B. Wehrli,
Employee Member



D.A. Ring,
Carrier Member

December 1, 1999

Date of Approval