

PUBLIC LAW BOARD NO. 5396

Parties
to the
Dispute

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:
: BROTHEROOD OF MAINTENANCE
: OF WAY EMPLOYES
:
: and
:
: SOUTHERN PACIFIC TRANSPORTATION
: COMPANY
: (Western Lines)
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: PLB Case No. 6
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: NMB Case No. 6
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STATEMENT OF CLAIM

1. That the Carrier violated the current Agreement when it dismissed Laborer A.R. Mendoza. 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 February 19, 1991, Claimant A.R. Mendoza was sent the following Notice of Investigation:

You are hereby notified to be present at the Office of the Trainmaster, 795 Newhall Street, San Jose, California, at 9:00 AM, Tuesday, February 26, 1991, for formal hearing to develop the facts and place responsibility, if any, in connection with your allegedly submitting a false injury report to Roadmaster L.C. Lybarger on Saturday, February 2, 1991.

You are charged with responsibility which may involve violation of the following rules, those parts reading:

"607. CONDUCT: Employees must not be:

... (4) Dishonest....

Any act of hostility, misconduct or willful disregard or negligence affecting the interests of the Company is sufficient cause for dismissal...

Indifference to duty, or to the performance of duty, will not be condoned."

"605. SUBJECT TO CALL: Employees subject to call must advise where they can be reached and must not absent themselves from their usual calling place without notice to those required to call them.

GENERAL RULE A, that part reading:

"A.Obedience to the rules is essential to safety and to remaining in service. The service demands the faithful, ...discharge of duty."

as shown in the Chief Engineer's Instructions for the Maintenance of Way and Structures dated March 1, 1990.

The hearing was held in absentia on March 7, 1991. Claimant was in jail at the time in San Luis Obispo. (Four days after he had been conditionally reinstated to work for a Rule G violation in August 1990, he had been arrested for public drunkenness and making obscene phone calls. He did not begin serving his term until February 1991.) The subject of the hearing was Claimant's report of an injury that he allegedly sustained on February 1, 1991, and which he reported a day later. Carrier concluded, following the investigation, that the charge was sustained and Claimant was terminated from service.

It is Carrier's belief that Claimant falsified his injury report as an excuse to stay away from work when he entered jail. This Board has reviewed the entire record of this case and finds that the preponderance of the circumstantial evidence produced by Carrier points to that conclusion. Claimant's dealings with Carrier throughout this period were at best duplicitous. Carrier has the right to expect that its employees will deal with the Company in a

straightforward manner. Based upon all of the facts of this case, the discipline imposed is appropriate.

AWARD

Claim denied.

C.H. Gold
C.H. Gold, Neutral Chairman

C.F. Foosé
C.F. Foosé, Employee Member

K.E. Johnson
K.E. Johnson, Carrier Member

9.23.94
Date of Approval