

PUBLIC LAW BOARD NO. 3558

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**
TO)
DISPUTE) **SOUTHERN PACIFIC TRANSPORTATION COMPANY**
 EASTERN LINES

AWARD

STATEMENT OF CLAIM:

"1. Carrier violated the effective Agreement when San Antonio Division Track Laborer J. C. Gray was unjustly dismissed from service.

2. Claimant Gray shall now be reinstated to his former position with all seniority, vacation rights and any other rights accruing to him and to run concurrently until such time that he is rightfully restored to service."
(MW-87-37)

OPINION OF BOARD:

Claimant is a laborer with sixteen years of service. As a result of charges dated January 28, 1987, hearing held on February 4, 1987 and by letter dated February 10, 1987, Claimant was dismissed from service for violation of Carrier's Rule G.

On January 19, 1987, while working in a normal fashion and without prior warning, Claimant fell to the ground and exhibited jerking, incoherent and unconscious seizure-like behavior for several minutes. Claimant was taken to a medical clinic for examination and testing. Although Claimant denies engaging in conduct prohibited by Rule G, based upon the results of the administered tests, Claimant was dismissed for violation of that rule. Further evidence shows that on April 18, 1983, Claimant suffered a similar seizure and was withheld from service until October 18, 1984.

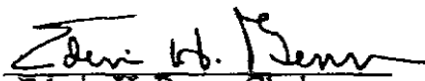
According to the record, Claimant has not exhibited an unusual amount of absenteeism. Further, Claimant is considered by Roadmaster D. W. Morrow as a good

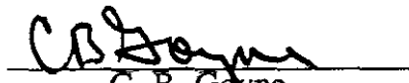
worker. Finally, after the dismissal, Claimant entered and completed a rehabilitation program.


Under the unusual circumstances presented and considering Claimant's lengthy service with the Carrier, we believe that although substantial evidence supports the Carrier's conclusion that Rule G was violated, dismissal was excessive in this case. The question of suitability for return to service must be resolved as set forth below.

AWARD:

Claimant shall be returned to service with seniority and other benefits unimpaired but without compensation for time lost. Return to service is conditioned upon Claimant's passing a return to service physical examination. Return to service is further conditioned upon Claimant's examination by a physician of his own choosing regarding the existence of seizure disorders. If Claimant's physician finds no seizure disorders present, then the Carrier, by its designated physician, shall have the option of examining Claimant for the existence of seizure disorders. Should Claimant's and the Carrier's physicians disagree on the diagnosis concerning the existence of seizure disorders, the dispute shall be resolved by a neutral qualified physician agreed upon by Claimant's and the Carrier's physicians.


Edwin H. Benn, Chairman
and Neutral Member


C. B. Gayne
Carrier Member


S. A. Hammons, Jr.
Organization Member

Houston, Texas
August 31, 1988