

PUBLIC LAW BOARD NO. 5396

Parties
to the
Dispute

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

and

SOUTHERN PACIFIC TRANSPORTATION
COMPANY
(Western Lines)

PLB Case No. 1

NMB Case No. 1

STATEMENT OF CLAIM

1. That the Carrier violated the current Agreement when it dismissed Track Laborer G. Yazzie. 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

At the time of his discharge from service on December 19, 1990, Track Laborer Gary Yazzie had four years and five months of employment with Carrier. During the latter two years and five months of his tenure, he was issued a

five-, ten-, thirty-, and sixty-day Suspension. All were for Rule 604 violations. Rule 604 of the Rules and Instructions for the Maintenance of Way and Structures Department reads as follows:

DUTY-REPORTING OR ABSENCE:

Employees must report for duty at the designated time and place. They must devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties or substitute others in their place without proper authority.

Continued failure by employees to protect their employment shall be sufficient cause for dismissal.

On October 7, 1990, Claimant called his Supervisor to say that his automobile had broken down in Flagstaff, Arizona, and that it would take approximately three days to fix it. He was told that he would have to report for duty the next day. Mr. Yazzie called again on October 8 and the Roadmaster was again told that he had to come to work. When Claimant neither appeared nor contacted Carrier, he was sent a letter of October 16, 1990, informing him that he had been absent without proper authority and that he was terminated in accordance with Appendix R of the Agreement. He

was given an opportunity to have an investigation under Rule 45. Following that investigation on November 30, 1990, Claimant was found to have violated Rules 604 and 607 and his termination was upheld. Rule 607 reads in pertinent part as follows:

CONDUCT

- (3) Indifference to duty, or to the performance of duty, will not be condoned.

This Board has reviewed the entire record of the case, including the transcript of the investigation. We conclude from that review that Claimant was granted a full and fair hearing and that sufficient evidence was produced therein to support the charge against him.

This Board has no basis to dispute the fact that Claimant's vehicle broke down while he was returning from his home in Pinon, Arizona, over the weekend. The Organization suggests that it was unreasonable for Carrier officials to deny him additional time in which to get it repaired. This Board does not agree. As already noted, Claimant had an extremely poor attendance record. In addition to four Suspensions, he had been given an educational talk just six days prior to this incident on the importance of complying

with Rule 604. Instead of making sure that he found alternative means to get to work, he elected not to appear and discontinued all contact with his employer. Claimant had not earned the right to expect additional accommodation on the part of Carrier, while at the same time the Company had the right to expect that members of Extra Gang 73 would be available for work, as scheduled, in Tehachapi, California, on October 8. Under all of the circumstances present here, Carrier's decision to terminate Claimant cannot be considered arbitrary or capricious.

AWARD

Claim denied.

C.H. Gold

C.H. Gold, Neutral Chairman

C.F. Foose

C.F. Foose, Employee Member

K.E. Johnson

K.E. Johnson, Carrier Member

8-29-94

Date of Approval