

PUBLIC LAW BOARD NO. 5396

Parties
to the
Dispute

:	:	:
:	:	:
:	BROTHERHOOD OF MAINTENANCE	:
:	OF WAY EMPLOYES	:
:	:	PLB Case No. 17
:	and	:
:	:	NMB Case No. 17
:	:	:
:	SOUTHERN PACIFIC TRANSPORTATION	:
:	COMPANY	:
:	(Western Lines)	:
:	:	:
:	:	:

STATEMENT OF CLAIM

1. That the Carrier violated the provisions of the current Agreement when it dismissed Welder Helper V.A. Butler. 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

Following an investigation on October 17, 1991, Claimant V.A. Butler, a Welder Helper with a seniority date of June 14, 1984, was dismissed from duty for insubordination and indifference to duty when he allegedly failed to comply

with instructions issued to him by a Company Officer. Specifically, Carrier had claimed that he had failed to provide protection against the movement of a train for a Welder working near Loma Linda on October 8, 1991. When later questioned by a Company Officer about what had transpired, Claimant refused to respond. Carrier contends that this behavior constitutes insubordination and indifference to duty.

This Board has reviewed the entire record of this case, including the transcript of the investigation. Based upon this review, we conclude that there was ample evidence brought forth at the hearing to support the charges. Claimant was looking at the grinding operation instead of keeping an eye out for movement on the track and failed to apprise the Welder of an approaching train. The Organization's argument that there was no real urgency is simply not persuasive, nor is its contention that dismissal was not warranted in this instance. Were this the only incident in Claimant's record, a lesser level of discipline would clearly be justified. But Claimant has a history of failing to perform his responsibilities as a lookout, for which he was counselled. Notations were made on sixteen occasions in a fourteen-month period in 1990-91 in regard to negligence on

the job. In addition, he was dismissed in 1990 for failure to report a personal injury and providing false and misleading information and later returned to work.

Under the circumstances here, we find that the discipline imposed was justified.

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

12-19-94
Date of Approval