

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. 20

NMB Case No. 20

STATEMENT OF CLAIM

1. That the Carrier violated the current Agreement when it dismissed Truck Driver W.E. Jones. 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 earlier dismissal and his reinstatement by a Public Law Board (which rendered a bench decision), Claimant was notified by letter dated August 7, 1990, to appear for a return-to-work physical. In a telephone call on

October 11, 1990, he was told by a Carrier Clerk that he could displace an individual working on Extra Gang No. 75 on the Tehachapi District. Claimant did not contact Carrier again until August 16, 1991, after he was sent a copy of the decision that had been rendered by the Public Law Board. He sought to return to work at that point and was denied the right to do so.

At his request, an investigation was held into the charge that he had been absent from duty without proper authority from September 27, 1990 through August 26, 1991. The charge was upheld and he was again terminated from service.

Claimant maintains that in his conversation with the Clerk, he was not given a definite date to report or told where to appear. It was his understanding that he would receive more correspondence in the mail.

This Board does not find Claimant's explanation for why he did not report as directed to be especially convincing. It appears rather that he was involved in a new business that was taking up his time and it was not convenient for him to return to Carrier's employ at that point.

The Board, however, is willing to give him the benefit of the doubt in this one instance. We will return him to

work on a last-chance basis. If his railroad employment is meaningful to him, he will accept this option and avoid any behavior in the future that will place his job in jeopardy.

AWARD

Claim sustained in part and denied in part. Claimant is returned to work on a last-chance basis with all seniority and rights in tact, but without backpay.

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

C. F. Foose
C.F. Foose, Employee Member

John H. Martin
J. Martin, Carrier Member

2-28-94
Date of Approval