

PUBLIC LAW BOARD NO. 5396

JP. VICE PRESIDENT

NOV 24 1957

REPORT

Parties  
to the  
Dispute

BROTHERHOOD OF MAINTENANCE  
OF WAY EMPLOYES

vs.

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY  
(Western Lines)

PLB Case No. 35

NMB Case No. 35

STATEMENT OF CLAIM

1. That the Carrier violated the provisions of the current Agreement when it assessed Mr. M.P. Ortega with a thirty (30) day suspension and disqualified him in the class of track supervisor [Class A]. 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 including the difference in pay resulting from the wrongful disqualification, and his record cleared of all charges.

FINDINGS

Track Supervisor M.P. Ortega was suspended for thirty days and disqualified from his position. Following an investigation, Carrier concluded that he had failed to respond to a reported

track defect on January 5, 1995, at Mile Post 511.2 between Mowich and Chemult, Oregon, after he had overheard a radio transmission between two Engineers discussing a rough spot at that location. A major train derailment occurred there the next day.

Carrier argues that Claimant "grossly failed to perform as a Track Supervisor" and failed either to check out the defect or report it to someone who could do so. Based upon our review of the entire record, this Board does not agree.

According to Claimant's testimony, his radio happened to be scanning all channels when he overheard the conversation. One Engineer suggested that there was a rough spot; the other said that his train "rode fine." Neither of the men officially reported a problem. Claimant, on the other hand, called the Dispatcher and repeated what he had heard. The Dispatcher said that he knew nothing about it. Claimant, who was involved in a project changing out defective rail behind the Rail Detector, went back to his assignment.

While the derailment was unfortunate, this Board cannot conclude that responsibility for the incident lies either primarily or solely with Claimant. There is no basis for the discipline assessed him or for the finding that he lacked proper qualifica-

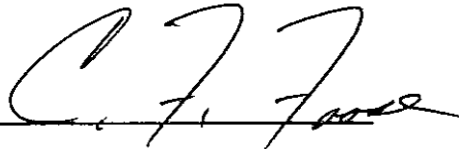
tions to perform his job. The claim is consequently granted in full.

AWARD

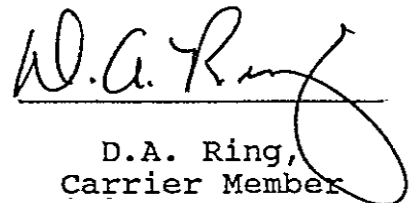
Claim sustained. Within thirty days of the approval of this Award, Claimant is to be restored to his former position with seniority and all other rights intact. He is to be compensated for the loss of pay during his Suspension, as well as for the difference in pay resulting from his disqualification. His record is to be cleared of all charges.




C.H. Gold,  
Neutral Chairman



C.F. Foose,  
Employee Member



D.A. Ring,  
Carrier Member



Date of Approval