

PUBLIC LAW BOARD NO. 5396

Parties
to the
Dispute

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

vs.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY
(Western Lines)

PLB Case No. 39

NMB Case No. 39

STATEMENT OF CLAIM

1. That the Carrier violated the provisions of the current Agreement when it dismissed Foreman A. Capas. 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

Claimant, Foreman A. Capas, was dismissed on April 3, 1995, as a result of a hearing held on March 2, 1995, into the charge that an illegal substance, cocaine, had been found in the course of a drug screen on February 16, 1995. The record reveals that

Claimant had been conditionally reinstated to service on August 18, 1994, after a previous drug test had revealed the presence of cocaine. He was reinstated with the understanding that he remain drug free.

This Board has reviewed the entire record of this case, including the transcript of the investigation. That review reveals that Claimant was afforded all procedural rights guaranteed to him by Agreement. It also reveals the fact that sufficient probative evidence was brought forth at the hearing to support the charge that he was in violation of Rule 1.5, Drugs and Alcohol:

The use of alcoholic beverages or intoxicants by employees subject to duty, or their possession, use, or being under the influence thereof while on duty or on Company property, is prohibited.

Employees shall not report for duty under the influence of, or use while on duty or on Company property any drug, medication or substance, including those prescribed by a doctor, that will in any way adversely affect their alertness, coordination, reaction, response or safety. Questionable cases involving prescribed medication shall be referred to a Company Medical Officer.

The illegal use, possession or sale while on or off duty of a drug, narcotic, or other substance which affects alertness, coordination, reaction, response, or safety, is prohibited.

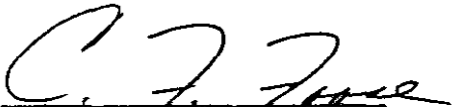
This Board is mindful of the fact that Claimant is a long-term employe, with a seniority date of January 8, 1970, and that he has sought to become and remain drug free through a drug rehabilitation program. At the same time, however, we are very much aware of the extreme hazard that an employe under the influence of an illegal substance may pose to his or her coworkers. Claimant was given an opportunity by Carrier to retain his job in the past. It need do no more.

AWARD

Claim denied.



C.H. Gold,
Neutral Chairman



C.F. Foose,
Employe Member



D.A. Ring,
Carrier Member

12-29-97

Date of Approval