

NOV 24 1957

PUBLIC LAW BOARD NO. 5396

Parties
to the
Dispute

:
:
: BROTHEROOD OF MAINTENANCE
: OF WAY EMPLOYES
:
: vs.
:
: SOUTHERN PACIFIC TRANSPORTATION
: COMPANY
: (Western Lines)
:
:
:

: PLB Case No. 41
:
: NMB Case No. 41
:
:
:
:
:

STATEMENT OF CLAIM

1. That the Carrier violated the provisions of the current Agreement when it suspended Foreman R.M. Saldivar. 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

Foreman R.M. Saldivar was installing a stationary piece of track (frog) at French Camp, California, on May 25, 1995, when he injured his back. He was called to an investigation to consider whether he had violated relevant safety Rules. Following the

hearing on August 15, 1995, he was found in violation of Rule

1.1, Safety:

Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment.

It is the responsibility of every employee to exercise care to avoid injury to themselves or others. Working safely is a condition of employment with the Company. The Company will not permit any employee to take an unnecessary risk in the performance of duty.

No job is so important, no service so urgent, that we cannot take the time to perform all work safely.

Claimant was assessed a nineteen-day Suspension, which the Organization disputes in this claim.

This Board has reviewed the entire record of the case, including the transcript of the investigation. In the final analysis, we are unable to find sufficient evidence to support the charge that Claimant was working in an unsafe manner or taking an unnecessary risk. Four of five Management witnesses who observed Claimant on the day in question could not identify any occasion when he was supposedly working unsafely. The fifth Management witness, who did not observe Claimant working, drew his conclusions from Claimant's comments about the incident later.

Claimant refused to sign a waiver and accept a ten-day Suspension because he did not believe that he was at fault. This Board agrees. The discipline assessed Claimant is therefore rescinded and any mention of it is to be expunged from his file.

AWARD

Claim sustained. Upon thirty days of the approval of this Award, Claimant is to be made whole.

CH Gold

C.H. Gold,
Neutral Chairman

C.F. Foose

C.F. Foose,
Employee Member

D.A. Ring

D.A. Ring,
Carrier Member

12-1-97

Date of Approval