

JR. VICE PRESIDENT

NOV 24 1997

PROPRIETARY

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. 43

NMB Case No. 43

STATEMENT OF CLAIM

1. That the Carrier violated the provisions of the current Agreement when it dismissed Welder W.E. Eden. 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 wage and benefit loss suffered and his record cleared of all charges.

FINDINGS

By letter dated June 26, 1995, Claimant, a Welder with a seniority date of May 5, 1976, was called to an investigation "...to develop the facts and place responsibility, if any, in connection with your alleged possession of Company tools and

material without authorization...." Following a telephone call from Claimant's wife, Carrier had visited his home and searched his garage. There, Company officers found numerous tools and safety equipment that they believed belonged to Carrier.

At the hearing, Claimant denied stealing these items. He maintained that some had been discarded by Carrier; others he had purchased at garage sales. Further, he was bringing the equipment back on an as needed basis. The Organization argued that (1) none of the items was identified as having been stolen from Carrier; (2) most of the tools were broken and/or worn and discarded; (3) as a Welder, Claimant had non-Company owned welding tools at his home; (4) Claimant's spouse had a vendetta against her husband because of a pending divorce; and (5) Claimant was not afforded a fair and impartial hearing.

Carrier does not think it plausible that Claimant kept equipment at home to bring to work as needed, given that there is a tool house available for storage at the work site. Further, it is a direct violation of Rule 1.19 to use Railroad property for personal use. He did not have permission to take this property to his home. The fact that he failed to return the equipment when he changed job locations suggests that he intended to keep it. Carrier does not find Claimant to be credible and maintains

that the Hearing Officer's judgment as to this matter should not be disturbed.

This Board has reviewed the entire record of the case, including the transcript of the investigation. We find that Claimant was afforded a fair hearing, with an ample opportunity to mount a full defense. We further find sufficient evidence to support the charge against him. As Carrier suggests, it is inappropriate for the Board to second guess the Hearing Officer's judgment as to Claimant's credibility.

There can be little doubt that Claimant's offense is a serious one. It would send the wrong message to other employees if this Board were to conclude that Claimant was free to appropriate Company property with impunity. At the same time, Claimant does not have clean hands in regard to this issue. He was suspended for a similar offense in 1979.

The record indicates that Claimant has been dismissed from service since October 4, 1995. His time held out of employment to date is sufficiently long so as to impress upon him the need to alter his unacceptable behavior. Should Claimant fail to learn from this experience that he may not take any Company property without proper approval, he will most certainly find

himself in the same position again. At that point, there will be no further help for him.

AWARD

Claim upheld in part and denied in part. Claimant is to be returned to service on a last-chance basis with seniority and all other rights intact, but without backpay.

CH Gold
C.H. Gold,
Neutral Chairman

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

W.A. Ring
D.A. Ring,
Carrier Member

12-1-99
Date of Approval