

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. 44

NMB Case No. 44

STATEMENT OF CLAIM

1. That the Carrier violated the provisions of the current Agreement when it dismissed Foreman Leonard D. Thierry. 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

Track Foreman Leonard D. Thierry was given a breath alcohol test on July 31, 1995, and was deemed to have tested positive. At an investigation held on September 12, 1995, Claimant acknowledged having consumed alcohol in the evening before reporting to

work. He had been conditionally reinstated to service on September 11, 1990, after having been dismissed for a positive drug/alcohol test.

Carrier points out that Claimant was tested at the Lancaster Community Hospital. He gave a urine sample and had a breath test administered by a Registered Nurse who was a Breath Alcohol Technician Instructor. His first breath test measured .059. His confirmatory test, conducted eighteen minutes later, indicated .041. Claimant maintains that this positive test does not have to be confirmed with urinalysis results.

This Board has reviewed this case in its entirety and finds that Claimant was afforded a full and fair hearing. There was probable cause for the Roadmaster to request the test initially. Although the Board also questions why the results of the urine test was not provided, it would appear that the breath test was conducted in a professional manner, proving conclusively that alcohol was present.

Claimant, a short-term employe at the time, was granted a prior opportunity to retain his employment with Carrier after a

similar incident. Carrier need not return to work an employee who cannot or is unable to abide by basic rules and regulations.

AWARD

Claim denied.

C.H. Gold

C.H. Gold,
Neutral Chairman

C.F. Foose

C.F. Foose,
Employee Member

D.A. Ring

D.A. Ring,
Carrier Member

12-29-97

Date of Approval