

PUBLIC LAW BOARD NO. 5396

Parties
to the
Dispute

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:
: BROTHEROOD OF MAINTENANCE
: OF WAY EMPLOYES
:
: and
:
: SOUTHERN PACIFIC TRANSPORTATION
: COMPANY
: (Western Lines)
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: PLB Case No. 5
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: NMB Case No. 5
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STATEMENT OF CLAIM

1. That the Carrier violated the current Agreement when it dismissed Track Laborer F. Burbank. 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

At an investigation held in absentia on February 15, 1991, Carrier produced evidence that Claimant, a Track Laborer on Extra Gang 23 in Wells, Nevada, absented himself without proper authority from November 10, 1990, forward.

It was also apparent at the hearing that Claimant knew of the date and location of the investigation, but provided no reasonable explanation for his absence.

Based upon the above, this Board concludes that Carrier was correct in proceeding with Claimant's hearing and that it had a sufficient basis upon which to conclude that Claimant should be terminated from service. In becoming an employee, individuals such as Claimant strike a bargain that in return for pay and other benefits, they will provide their services on a regular basis. Claimant failed to live up to his side of the bargain and thus his discharge is justified.

AWARD

Claim denied.

C.H. Gold
C.H. Gold, Neutral Chairman

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

K.E. Johnson
K.E. Johnson, Carrier Member

8-29-94
Date of Approval