

PUBLIC LAW BOARD NO. 5396

Parties
to the
Dispute

:
:
:
: BROTHERHOOD OF MAINTENANCE
: OF WAY EMPLOYES
:
: and
:
: SOUTHERN PACIFIC TRANSPORTATION
: COMPANY
: (Western Lines)
:
:
:

: PLB Case No. 8
:
: NMB Case No. 8
:
:
:
:
:
:

STATEMENT OF CLAIM

1. That the Carrier violated the current Agreement when it dismissed Laborer-Operator M.A. Sargent. 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

Following a hearing held on January 30 and February 5, 1991, Claimant, who was assigned as a Track Laborer, was terminated from service. He had been called to the hearing in connection with his alleged insubordination and failure

to cooperate upon being questioned about driving erratically and unsafely on Company property on January 23, 1993.

This Board has reviewed the entire record of the case, including the transcript of the investigation. From this record, it is evident that Carrier produced sufficient probative evidence at the hearing to sustain the charge against Claimant. He apparently was driving at a high speed, narrowly missing two coworkers. When questioned about the incidents, Claimant refused to respond. He continued to do so when told that his failure to cooperate would be viewed as insubordination.

Claimant did violate Rules 607 and 621 by being careless in the safety of others and insubordinate, as well as failing to provide the information requested. His past record during his short tenure with Carrier includes violations of these rules on three occasions and three instances of counselling. Despite this less than laudatory work history, this Board does not believe that his final separation from service is warranted. His time held out of service should be sufficient to place him on notice that he

must cooperate under circumstances such as this and be responsive to the bona fide orders of Management.

AWARD

Claim sustained in part and denied in part. Claimant is to be returned to service with seniority and all other rights in tact, but with no back pay.

C.H. Gold

C.H. Gold, Neutral Chairman

C.F. Foose

C.F. Foose, Employee Member

John H. Martin

John H. Martin, Carrier Member

2-28-94

Date of Approval