

Org. File 1732-57-8584
Co. File TRN W-5-58

Decision No. 5748
Case 1140
Supplemental List No. 91

SPECIAL ADJUSTMENT BOARD NO. 18
(Train Service Panel)

PARTIES TO DISPUTE: United Transportation Union-
Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: Request of Brakeman Richard M. Harmon, Coast District, Western Division, for reinstatement to service with seniority unimpaired and for replacement of wage loss resulting from his suspension from service on September 30, 1985 and his dismissal from service on October 29, 1985 because of his alleged violation of Rule 801 of the Rules and Regulations of the Transportation Department which occurred on September 30, 1985.

STATEMENT OF FACTS: On October 1, 1985 the Carrier directed the Claimant to attend an investigation. The notice read in pertinent part as follows:

"You are hereby notified to be present at the Office of the Terminal Superintendent, 515 Bay Street, Oakland at 10:00 a.m., Friday, October 4, 1985 for formal investigation being held to develop the facts and place responsibility, if any, in connection with your alleged refusal to give a urine specimen for a toxicological test as instructed at 6:05 am, September 30, 1985 by Assistant Trainmaster M. G. Quihuiz at Watsonville. The aforementioned toxicological test was required of crew members of the 01 RVWJY-29 of which you were the conductor and brakeman respectively, which derailed at Milepost 49.5 which may be in violation of Rule 801, that portion of the first paragraph reading:

"Employees will not be retained in the service who are . . insubordinate . . ."

"of the Rules and Regulations of the Transportation Department, Southern Pacific Transportation Company.

"You are entitled to representation and witnesses in accordance with your agreement provisions.

"Any request for postponement must be submitted in writing to the undersigned, including the reason therefor."


Subsequent to the investigation, the Claimant was dismissed. On April 21, 1986 the Carrier offered the Claimant reinstatement without time lost but without prejudice to his

right to progress a claim to the Board for lost earnings. The offer was rejected.

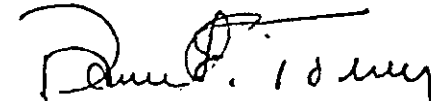
FINDINGS: The Board finds, after hearing upon the whole record and all evidence that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement and it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

DECISION: The Claimant here was Conductor Hamilton's Brakeman in an incident covered by Decision NO. 5749.

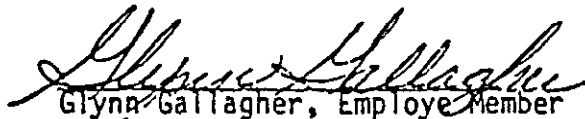
For reasons set forth in that decision, the Claim here is sustained to the same limited extent.



Gilbert H. Vernon
Chairman and Neutral Member



D. E. Torrey, Carrier Member



Glynn Gallagher, Employee Member

Dated this 11 day of May 1987
San Francisco, California.