

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The twenty-eight (28) days of suspension imposed upon Machine Operator **J. M. Lewis** for alleged violation of Rule 1041 on November 6, 1985 was arbitrary, unreasonable and **in** violation of the Agreement (System File MW-86-211445-63-A).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier **or** carriers and the **employee or employees** involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction **over** the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant has been employed for a period of ten years with no record of prior discipline.

On November 14, 1985, the Carrier sent a letter to the Claimant which read as follows:

"Records indicate that you are assigned **to** Ballast Regulator 150 RH and on November 6, 1985, a" audit and investigation of equipment and personnel was being conducted in the Beaumont Area at approximately **4:30** PM, and your machine was found with safety devices missing or fixed in an unsafe manner, which may be in violation of Rule 1041, of the Rules and Regulations of the Maintenance of Way and structures, of the SPTCO, which is effective October 28, 1985, which reads in part as follows :

'Rule 1041. **Responsibility:** They will be held responsible for the safety, care, maintenance and performance of the machines to which they are assigned... If a safety device is not operating properly the operator will take every **precaution** for safety. If the machine cannot be operated safely, it will be removed from the service and wire report will be sent to the supervisor of work equipment and division engineer.. . '

Therefore, as a result of your action, you are hereby suspended from the service of the SPTCO, for a period of four (4) weeks, (28) calendar days.

You are to report **to** your job assignment, effective December **6th**, 1985."

The Claimant requested a **formal Investigation** which was held on December 17, 1985. The Claimant was present and represented by the Organization. The Investigation was conducted in a fair and impartial manner.

Following the Investigation, the Carrier affirmed its decision **im-**posing a **suspension** of twenty-eight (28) calendar days.

Upon due consideration of all the evidence in the record, we find the evidence sufficient to support the Carrier's charge; however, we find the discipline assessed to be excessive. The twenty-eight (28) calendar day suspension shall be reduced to a ten **(10)** calendar day suspensia" and the Claimant shall be paid his actual time lost for the period exceeding ten **(10)** calendar days.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third **Division**

Attest:


Nancy J. Deaver - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.