

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

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

(1) The discipline assessed Machine Operator E. H. Williams for alleged violation of Rule 965 (Paragraph 1) on October 27, 1989 was without just and sufficient cause and in violation of the Agreement (System Files MW-90-3/487-5-A and MW-90-13/488-41-A SPE).

(2) The Claimant shall have his record cleared of the charges leveled against him and he shall be compensated one hundred seventy-six (176) hours at his respective straight time rate of pay for all time lost from October 30 through November 28, 1989."

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 employees 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.

At the time of the incident precipitating the instant case, Claimant was a machine operator assigned to operate Burro Crane SP 0279 under the direct supervision of an Assistant Foreman. On October 27, 1989, the Claimant was instructed to pick up track material at Miller Yard, in the vicinity of Dallas, Texas. In order to accomplish that task, Claimant moved Burro Crane 0279 and pulled two empty gondolas approximately twelve miles from Ennis to Dallas, Texas. As Claimant progressed to his destination, the burro crane and cars passed through the "Truck Terminal" switch to the TOFC facility approximately five hundred feet further down the track. Despite the fact that the switch was not lined for the direction the burro crane was traveling in, it did not inhibit the progress of the crane or gondolas. A short time later, however, a westbound "SPRINT" train crossed the "Truck Terminal" switch and Engines SP 8042 and SP 8045 derailed.

By letter of October 30, 1989, Claimant was notified that he was withheld from service pending formal Investigation

"to develop the facts and place responsibility, if any, in connection with your alleged failure to see that the switch at the Truck Terminal on the west end of the River Bridge was properly lined for your movement, that resulted in your running through the switch and leaving it in a position to cause the derailment of engines SP 8042 and SP 8045, and delay to train traffic, between approximately 12:05 P.M. and 12:21 P.M., Friday, October 27, 1989, in the vicinity of MP 260.18, Miller Yard, Dallas, Texas, while you were working as Operator on Machine SP 0279.

You are charged with responsibility which may involve violation of Rule 965, Paragraph 1. of the General Rules and Regulations for the government of Maintenance of Way and Structures employees, effective October 28, 1985, Southern Pacific Transportation Company."

Rule 965, Paragraph 1 of the General Rules and Regulations reads as follows:

"SWITCHES, HIGHWAY CROSSINGS AND RAILROAD CROSSINGS: Operators must use extreme caution when running over switches, frogs, derails and crossings and must flag over crossings where traffic is dense. Highway traffic has the right of way."

A Hearing was held on November 10, 1989, following which Carrier notified the Claimant that he was assessed a thirty day actual suspension, commencing October 30, 1989, and extending to and including November 28, 1989.

At the outset, the Organization maintains that Claimant was erroneously withheld from service pending Investigation. Carrier contends that the nature of the violation, if proven, was sufficiently serious to warrant withholding the Claimant from service until the matter of his responsibility was resolved. In light of the derailment resulting from the misaligned switch, this Board does not find that Carrier's decision to withhold Claimant from service pending Investigation was an abuse of its managerial discretion in this case.

The Organization further suggests that Carrier has not proven the charges against Claimant. Specifically, the Organization argues that the Assistant Foreman should bear the blame for failing to ascertain that all switches over which Claimant's vehicle passed were in the correct position. It maintains that Claimant properly assumed the Assistant Foreman would adjust

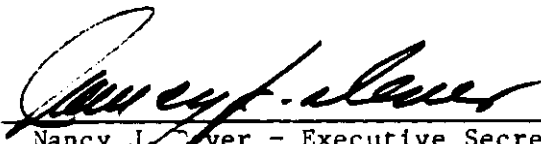
any necessary switches on the track over which the burro crane would travel. The record before the Board fails to support the Organization's position. It is unrefuted that the Assistant Foreman informed the Claimant that he would be traveling in his truck while Claimant proceeded along the track. Moreover, by his own testimony at the Investigation, Claimant admitted that he had not noticed any switch at the site of the subsequent derailment. Such admitted lack of attention strongly supports Carrier's finding that Claimant was in fact in violation of Rule 965, Paragraph 1, prior to the derailment. Accordingly, the Board finds no basis for sustaining the present claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Cover - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.