

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Louisiana & Arkansas Railway Company

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

(1) The sixty (60) days of suspension imposed upon Track Foreman K. R. Simoneaux for alleged failure to provide proper flag protection for Maintenance of Way Machine No. 889 on the main line near Mile Post T-8 at approximately 7:25 A.M. on May 9, 1984 was unreasonable and unwarranted (Carrier's File 013.31-304).

(2) The claimant's record shall be cleared 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 employe or employes involved in this dispute are respectively carrier and employes 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 and others were subject to an Investigative Hearing as to responsibility in connection with the following:

"... an incident in which No. 53's connection, Extra ATSF 2725 South, found Maintenance of Way Machine No. 889 on the main line near Mile Post T-8 without proper flag protection, at approximately 7:25 a.m., Wednesday, May 9, 1984. Also for Maintenance of Way Foreman Simoneaux's failure to properly report the incident to a supervisor."

Following the Investigation the Claimant was advised as follows:

"Reference is made to the investigation conducted on June 12, 1984 by Superintendent C. A. Harrison in

connection with your occupying the main track on May 9, 1984 when Extra ATSF 2725 came upon you in the vicinity of Mile Post T-8.

After careful review of the transcript of the investigation it was the decision that you were responsible and you are hereby suspended from the service of the Company for a period of sixty calendar days commencing July 11, 1984."

The Claimant was assigned to the operation of an Automatic Tamping Machine. The record shows, without dispute, that he operated his machine on a main line outside the limit of his Form U Train Order and did so without providing flag protection or knowing the location of a train properly operating on this main track. The Carrier cited numerous rules demonstrating that the Claimant's action was contrary to operation requirements. While the Claimant's machine and the train did not collide, there can be no question that the Claimant's failure to follow required procedure created a seriously dangerous condition for himself, other employees and equipment.

The Organization argues that the notice of Hearing, as quoted above, failed to cite specific rules and thus the Carrier cannot properly find the Claimant in violation of such rules. The Board determines, nevertheless, that there was no doubt as to the incident which was to be under review at the Hearing. The rules referred to at the Hearing were in direct relation to the incident itself. The resulting penalty simply confirmed the Claimant's responsibility for occupying the main track under inappropriate conditions. There is no basis to disturb the Carrier's resulting disciplinary action.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Devitt - Executive Secretary

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