

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

STATEMENT "1. That the Carrier violated the Agreement when on June 10, 1977 it sus-
OF CLAIM pended Mr. F.S. Rascon from his assigned position of End Loader Opera-
tor on charges not sustained by the hearing record, said action being
in abuse of discretion.
2. That Carrier now compensate Claimant for all wage loss suffered and
that his service record be cleared of all charges."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, while spreading ballast with his End Loader, slipped off the track and his End Loader damaged a power switch machine necessitating its total replacement. Following an investigation for this alleged carelessness, Claimant was accorded a ten day suspension.

There is no essential disagreement as to the events on the day in question. Claimant was straddling the rails with his End Loader and the tire slipped causing the End Loader to move over the switch machine damaging it. The questions at issue are whether Claimant's actions were careless and as such a violation of Carrier Rules and if so, was the penalty appropriate.

Carrier insists that Claimant, with twenty-six years of experience, should have used better judgement than that which he apparently used during the incident in question. There is no question, according to Carrier, that he operated his machine in a careless manner resulting in approximately \$4,500 worth of damage to a power switch machine. Petitioner, on the other hand, claims that there were no specific instructions as to a method of

performing the task at hand and hence, Claimant simply operated as he always had in the past. While Petitioner agreed that there might have been an alternate method of accomplishing the task assigned to Claimant, he was not given such instruction and as such the accident was not caused by carelessness on his part. In short, the accident occurred, but not necessarily as a result of carelessness. Petitioner also notes that Claimant had no assistance during his operation.

One of Carrier's witnesses admitted under cross examination that there were occasions in which End Loaders were permitted to straddle the tracks while spreading ballast. It was clear, however, that such a position for the End Loader was not condoned or approved in the vicinity of switching machines. Nevertheless, Claimant with his lengthy experience should have been aware of the alternatives which were obviously available to him to complete his job and been more careful of the delicate equipment in the vicinity of his machine. One significant point must be made that there is no indication that Claimant's supervisor ever instructed him not to put his End Loader straddling the tracks in the area in question. In fact, Claimant's testimony is that his supervisor and many other Carrier officials have observed his End Loader and others straddling the tracks and have never instructed employees to the contrary.

On balance, Claimant was guilty of at most a mistake in judgment. He did have alternatives available to him and he did not necessarily have to operate his End Loader on the tracks where the possibility of an accident to a delicate machine was possible. However, Carrier must bear some culpability for not providing explicit instructions to its machine operators on the subject as well as providing no assistance for the mechanic in this assignment. We must conclude therefore, that Claimant was guilty in part as claimed by Carrier. Therefore, we shall change the penalty from a ten day suspension to one of five and Claimant should be made whole for the difference.

AWARD

Claim sustained in part; The suspension shall be reduced from ten days to five and Claimant made whole for the difference.

ORDER

Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I.M. Lieberman, Neutral-Chairman


Carrier Member
Employee Member

November 1979
San Francisco, California