

PUBLIC LAW BOARD NO. 1925

Award No. 19

Case No. 19  
Docket No. 19

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company  
-Texas and Louisiana Lines-

Statement of Claim: 1. Carrier violated the effective Agreement by unfairly and without just cause dismissed from its service on November 30, 1976 Machine Operator David Posas.

2. Claimant shall be reinstated to his former position with all pay for time lost and with all seniority, vacation, insurance, and other rights unimpaired.

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 dated March 23, 1977, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant was employed as a Machine Operator Helper, March 29, 1976 on the San Antonio Division. He was dismissed eight months later, on November 30, 1976 for violation of Rules MM, M-869 (operation of track machines) and Rule 3 (operation of Equipment) because of a collision between the Tie Crane Machine which he was operating and a Tie Pusher Machine. Claimant requested and was granted a hearing on December 28, 1976, however, it failed to change the discipline originally imposed.

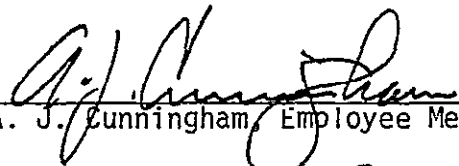

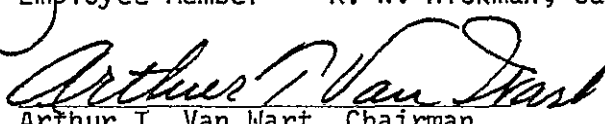
The Board finds that Claimant was accorded due process and that there was sufficient evidence adduced to permit of the conclusion reached by the Board.

PLB 1925

The Board finds circumstances herein which serve only to mitigate the discipline imposed. Claimant, who was operating a Tie Crane Machine, had only operated a machine for three months. He was never furnished a copy of the rules used by Carrier or given an opportunity to read them. Nor was Claimant ever given an examination on the operation of track equipment although he was given 16 hours of instruction thereon. The admitted presence of oil on the track might well have been contributory to the collision between the two machines. Consequently, Claimant is reinstated to service with his seniority rights unimpaired, but without any pay for the time held out of service subject to his passing the usual return to service physical examination.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

 A. J. Cunningham, Employee Member	 R. W. Hickman, Carrier Member
 Arthur T. Van Wart, Chairman and Neutral Member	

Issued at Houston, Texas, May 8, 1978.