

PUBLIC LAW BOARD NO. 1925

Award No. 3

Case No. 3

File No. MW-76-28

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 Agreement when on February 11, 1976, Machine Operator C. E. Collins, Jr., was dismissed from Carrier's service, improperly, unjustly and with charges unproven.

2. Claimant Collins shall now be reinstated in Carrier's service, with his seniority, vacation, fringe benefits and other rights unimpaired and paid for all time lost on this account.

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, a qualified Machine Operator, was assigned to and operating Ballast Regulator 227-R, on February 3, 1976. While working in the vicinity of Mile Post 819.35, near El Paso, Texas, Claimant's Machine struck a pick-up truck on the crossing at Lafayette Street. Claimant was dismissed from service February 11, 1976, for violation of Rules M-226 and M-228. He requested and was

granted a hearing hereon. Carrier concluded that as a result thereof that Claimant was guilty as charged.

The Rules and Regulations for the Maintenance of Way and Structures which were allegedly violated, in pertinent part, provide:

"M-226. When approaching Street or highway grade crossings, operators of track cars must have their cars under control and before proceeding must know that vehicular traffic will not be endangered. When necessary to ensure safe passage, track cars must be preceded by a flagman or when approaching railroad grade crossings, operators of track cars must have their cars under control and, before proceeding, must be assured that the route is clear for safe passage of track car over the crossing."

"M-228. Maximum speed governing movement of track cars follows:  
(1) Five (5) miles per hour over street and road crossings..."

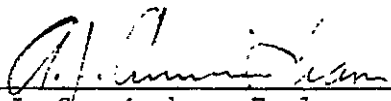
The record reflects that Claimant was accorded due process.

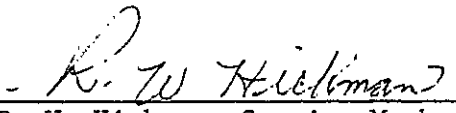
The Board finds that sufficient credible and probative evidence, including Claimant's admissions, were adduced to support Carrier's conclusion as to Claimant's culpability. The transcript shows that Claimant had a clear view of the crossing, that he did not stop at the public crossing, nor did Claimant have control of his vehicle. He went across Lafayette crossing in excess of the permissible speed. The Board finds no reason in the record to change Carrier's conclusion that Claimant was guilty as charged.

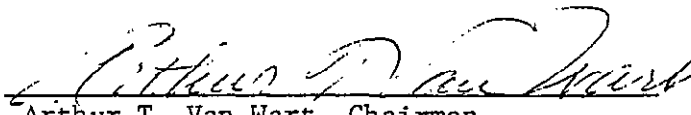
A review of Claimant's service record provided no reason therein for mitigation of the discipline imposed, To the contrary it impells

the Board to conclude that the previous imposition of reasonable discipline failed to cause Claimant to be more observant of his obligations and the governing rules. In the circumstances the claim will be denied.

Award: Claim denied

  
A. J. Cunningham, Employee Member

  
R. W. Hickman, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Falmouth, Massachusetts, September 7, 1977.