

PUBLIC LAW BOARD NO. 1925

Award No. 4

Case No. 4
M.S.File No. 76-29

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute Southern Pacific Transportation Company
Texas and Louisiana Lines

Statement of Claim: Claim of the System Committee of the Brotherhood that:
(1) The discipline of Welder Helper T. J. Alleman for alleged 'violation of Rules 801, 804, and M of General Notice, Form S-2292' was without just and sufficient cause and on the basis of unproven charges (System File MW-76-29).
(2) Welder Helper T. J. Alleman be compensated for all wage loss suffered, including overtime from February 3, 1976, through May 29, 1976, both dates inclusive.

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 hearings held.

Claimant, a Welder Helper on the Lafayette Division, was working on the Main line on February 2, 1976, in the vicinity of Mile Post 187, under the immediate direction of Welder W. Johnson. In the process of welding to build up rail ends and grinding same, a main line local freight, No. 58, struck and damaged the cross grinder and push cart being used in this work on February 2nd.

As a result thereof, Claimant, for his failure to provide proper protection to the equipment, was dismissed from service February 5, 1976. He requested and was granted a hearing thereon. Carrier found that the hearing showed Claimant as being guilty as charged.

Carrier offered on March 9, 1976, to reinstate Claimant on a leniency basis but such offer was refused. Carrier unilaterally reinstated Claimant to service on May 25, 1976.

The Rules cited in Claimant's dismissal letter, in pertinent part, provide:

"801. Employees will not be retained in service who are careless of the safety of themselves or others, indifferent to duty,..."

"804. Any...wilful disregard or negligence..."

"M Employees must exercise care to avoid injury to themselves or others...."

"Carelessness by employees of the safety of themselves or others will not be condoned...."

The Board finds that Claimant was given a fair hearing. The presence of headend crew member was not necessary to prove that the cross grinder and the Nolan push car was struck. Claimant agreed that such equipment had been struck by train No. 58. Their presence as a part of the Employee's defense rested with Claimant's obligation to request their presence. Their absence provides no cause for reversal here.

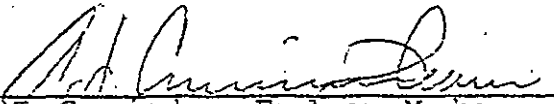
The evidence adduced was sufficient to warrant and support the conclusion that discipline was warranted Claimant Welder Helper for his failure on February 2, 1976. The record reflects that Claimant had a view one half mile east and west on the curve where the machine was working. Carrier concluded that Claimant's terse warning, "Watch it, Johnson, there's a train" was an untimely notice reflecting that he had not been alert and on the lookout for oncoming trains. Claimant testified that 4 to 6 trains in either direction passed by daily and that he never encountered difficulty before and that he was within view of a signal which according to him did not light up. This provided basis for the inference that absent evidence to the contrary, Claimant was not alert to the possibility of oncoming trains.

There are mitigating circumstances concerning the discipline assessed. The record reflected that Welder W. Johnson, Claimant's immediate supervisor, received 45 demerits for his failure to obtain a proper line up of trains on February 2, 1976. Such failure by the Welder created an undue degree of responsibility for the Claimant to assume. In assessing discipline, Carrier dismissed Claimant while only assessing 45 demerits to the Welder. Yet, Carrier was willing to reinstate Claimant without pay within a month of his dismissal, and after such offer was refused, Carrier unilaterally reinstated Claimant on May 29, 1976. The majority of the Board finds the discipline to be disproportionate and arbitrary and

and it reduces same. Therefore, Claimant's discipline, in the circumstances herein, should have been suspension from February 2, 1976 to April 2, 1976. His service record is to be adjusted accordingly and paid the difference in earnings lost thereby.

Award: Disposed of 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 Falmouth, Massachusetts, September 7, 1977.