

Public Law Board No. 2363

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Seaboard System Railroad (former L&N Railroad)

STATEMENT
OF
CLAIM:

Claimant J. D. Lund shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered from April 23, 1984.

FINDINGS:

Claimant was assigned as an assistant foreman on the dates of the two incidents which led to his dismissal. He had over eight years service as of that time.

The first incident occurred on February 15, 1984. On that date, he had obtained a Form "W" train order from the train dispatcher; it gave permission for his gang to occupy and work on the main line track between M.P. K-627 and K-617.2 from 6:45 a.m. to 4:30 p.m.

Under applicable rules, claimant was required to have placed a "Conditional Stop" track sign at both ends of the territory covered by the train order. The engineer of a train approaching M.P. K-617.2 found no "Conditional Stop" sign at that location and

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was unable to reach claimant on the radio. The train was delayed for about 50 minutes until claimant called its engineer and informed him that the track was clear.

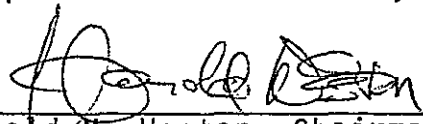
No basis is perceived for setting aside Carrier's finding that claimant did not comply with its regulations on February 15, 1984. Claimant's train order had not expired at the time the train approached M.P. K-617.2.

The second incident on which claimant's dismissal is based involved the derailment of a freight train on February 24, 1984. Investigation indicated that claimant and his tamping force had worked in the area of the derailment the day before the accident. However, the evidence is not sufficiently clear to support Carrier's finding that claimant deliberately made false reports or statements concerning the place where his crew had worked. While it may well be that claimant did not use sound judgment by tamping straight track rather than curves, the record is not sufficiently strong and detailed to provide a sound basis for dismissal, even when his discipline record is taken into consideration. There is no indication he had previously been guilty of similar infractions.

AWARD:

Claimant to be reinstated with seniority rights unimpaired but without back pay. To be effective within 30 days.

Adopted at Jacksonville, Florida, January 28, 1985.


Harold M. Weston, Chairman


Carrier Member


Employee Member