

PUBLIC LAW BOARD NO. 2439

Award No. 31
Case No. 31

PARTIES
TO
DISPUTE

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

STATEMENT
OF CLAIM

"1. That the Carrier violated the provisions of the current Agreement when it suspended Track Foreman M.C. Gamino for a period of five (5) working days commencing May 21, 1979, said action being unduly harsh and in abuse of discretion.

2. That Track Foreman M.C Gamino now be compensated at the rate applicable to his position for any and all time lost suffered by him during the suspension period, and that his personal record be cleared of the charges placed thereon as a result of the alleged violation."

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 herein was in charge of a gang as foreman which was involved in doing certain repair work in the vicinity of mile post 482 which consisted of repairing a broken rail by a welding process. In the course of such work, it was necessary for a "form Y" train order to be effect to protect the work to be performed. Under the existence of such an order in accordance with Carrier rules, it was necessary that the foreman, in this instance, Claimant, be in the immediate vicinity of the green sign so that he could pass trains when they arrived at that location.

The evidence at the investigation reveals, and Claimant does not deny, that he stopped at a hamburger stand to allow the employees on the truck who were members of his gang the opportunity to obtain a lunch and/or coffee before reporting to the work location.

That stop was made subsequent to the placing of the "form Y" order boards. The location of the hamburger stand or restaurant was some two miles from the work limits. He was observed at that point by his immediate supervisor.

It was Carrier's position that Claimant stayed away from his work location for approximately ten or twelve minutes which was approximately equivalent to the delay experienced by a freight train which can be directly attributed to Claimant's action. Petitioner insists that the admonishment of Claimant by the road master, upon arrival at the scene, was sufficient to satisfy the incident since the circumstances which raised some questions about whether or not Claimant's actions delayed the train.

It is inescapable to this Board that Claimant was indeed in violation of Carrier's rules when he was approximately ten or twelve minutes away from the work site after the particular special orders were in effect. This dereliction of his responsibility cannot be tolerated. Hence, the evidence is quite clear that there was sufficient basis for Carrier's conclusion that Claimant was guilty. With respect to the penalty imposed, under the circumstances, the five day suspension cannot be considered to be excessive, harsh or discriminatory. The claim must be denied.

AWARD

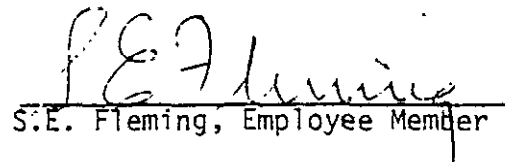
Claim denied.



I.M. Lieberman, Neutral-Chairman



L.C. Scherling, Carrier Member



S.E. Fleming, Employee Member