

PUBLIC LAW BOARD NO. 2439

Award No. 54
Case No. 54

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 Agreement when it suspended Mr. Vincent F. Espinosa, Foreman, Inspection and Repair, for a period of thirty (30) calendar days, from July 1 to and including July 30, 1981, on charges not sustained by the hearing record, said action by the Carrier being unduly harsh and in abuse of discretion.
2. That Mr. Vincent F. Espinosa now be paid for all time lost from his Foreman, Inspection and Repair, position from July 1 through 30, 1981, and the charges placed on his personal record as a result of the allegations be expunged therefrom."

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.

On the date of the incident herein, May 28, 1981, the Claimant, had had seniority dating to August 11, 1952, was involved in an assignment as a Foreman, Inspection and Repair. On the morning in question, at approximately 7:00 A.M., he had obtained a lineup of trains to be operated in the territory he was to run his motorcar for his inspection duties. On the day in question communications were poor and he was unable to raise anyone with his radio until after 11:00 A.M. on May 28. Thus, for approximately one and one-half hours he operated his motorcar without a lineup of trains. At approximately 11:00 A.M., he received information concerning a train which was to operate on the track. Subsequently, his motorcar was derailed, and he and his assistant were unable to remove it from the track in timely fashion. The motorcar was subsequently struck by the approaching train and, of course, damaged, although there was no injury to any individuals as a result of this accident. Subsequently, following a Hearing to investigate the facts, Claimant was assessed a thirty calendar day suspension for his violation of Company rules.

Carrier takes the position that Claimant failed to properly observe the rules in order to protect himself, his subordinate, and the Carrier's equipment by not taking action sufficiently in advance of a known approaching train. If he had taken such action, according to the Carrier, he could have avoided the inevitable collision. Further, Carrier notes that the potential or serious dangers inherent in such an accident are very significant. Hence, Carrier asserts that the discipline accorded to Claimant was not severe in view of the seriousness of the accident and infraction.

Petitioner argues that the record is clear in that the place where the motorcar was derailed was a very difficult one and it was impossible to clear the motorcar from the track sufficiently to prevent it from being struck by the train. Furthermore, the derailment of the motorcar occurred when it struck a stick which had been placed on the rail by some trespassers. Further, Petitioner notes, that Claimant was operating the car well within the speed limits which were permitted through this type of curve under normal weather conditions. The organization contends that Carrier has failed to prove that Claimant was solely responsible for the incident in question and, hence, the discipline assessed was excessive and inappropriate.

The record is clear in the investigation transcript that Claimant could certainly have taken some action prior to the collision to avert the accident. He did not do so. Whether it was the excitement of the moment and the intense effort to remove the motorcar from the rails or not, the fact remains that Claimant took no action to prevent the accident from occurring. For the reasons indicated and based on the entire transcript, there was sufficient evidence to support Carrier's conclusion that Claimant was guilty of the charges leveled against him. In view of the seriousness of the accident and the potential for grave consequences, the discipline assessed was reasonable and cannot be considered to have been an abuse of discretion. Therefore, the Claim must be denied.

AWARD


Claim denied.



I. M. Lieberman, Neutral-Chairman



L. C. Scherling, Carrier Member



S. E. Fleming, Employee Member