

PUBLIC LAW BOARD NO. 2444

Award No. 89

Case No. 103

Docket No. MW-82-45

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company
(Texas and Louisiana Lines)

Statement

of Claim: Claim of BMWE and System Machine Operator A. V. Lopez for an arbitrary and penalty payment of 264 hours at his respective straight time rate of pay, and his record cleared of all charges, alleging unjustly suspended:

Findings: The Board, after hearing upon the whole record and all evidence, finds 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 July 19, 1979, 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 System Machine Operator, assigned as Operator of Mobile Crane SPO 218 working near San Antonio, was advised, under date of December 23, 1981, by the Regional Maintenance of Way Manager, in part, as follows:

"On Dec. 7, 1981, you were assigned as operator Mobile Crane SPO 218 unloading rail from tractor trailer just west of MofW trailer park at San Antonio (East Yard) when crane boom came in contact with electrical power line. You did not make report of this incident on December 7, 1981, with no report being made until December 11, 1981. Your handling and/or lack of handling prior and/or subsequent to this incident was in violation of Rule M242 and Rule M863 of Rules and Regulations of the Maintenance of Way Instructions, which are quoted below:

'Rule M242. All accidents, however minor, involving Company vehicles must be reported as outlined in Rules for the Safe Operation and Care of Automotive and Trailer Equipment.'

'Rule M863. Operators of track machines, rotary machines or equipment are charged with the responsibility of knowing that their machines or equipment are in safe and operative condition before starting, and must assure themselves that proper protection is being afforded for their operations.'

For your responsibility for violations of Rules M242 and M863 on Dec. 7, 1981, you are suspended from service...for 45-day period effective Dec. 29, 1981. This period of suspension will not be considered vacation time, and you will not be otherwise compensated during this period..."

Claimant requested and was granted a hearing which was held on December 29, 1982. As a result thereof, he was advised that the discipline was sustained.

The Board finds that there was sufficient evidence adduced to support the conclusions reached by Carrier.

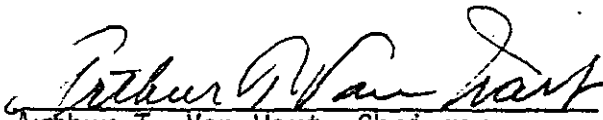
However, there were circumstances reflected in the record which give cause to conclude that the decision assessed was excessive. Therefore, it will be reduced to 25 days and an adjustment made accordingly.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


M. A. Christie, Employee Member


C. B. Goyne, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member