

PUBLIC LAW BOARD NO. 2556

Award No. 15

Case No. 19

File No. MW-277

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Georgia, Southern and Florida Railway Company

Statement

of Claim: Claim on behalf of R.J. Sweigard the second for reinstatement with seniority and other rights unimpaired, and pay for all time lost subsequent to July 28, 1980, account dismissed for failure to protect his assignment, and for failure to follow instructions.

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 October 17, 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 was removed from service July 28, 1980 with the following letter:

"I am removing you from the service of the Southern Railway System effective now, for your failure to protect your assignment also clearing train No. 155 when you were not at job site.

We'll notify you of investigation in due time and in accordance with your schedule working agreement."

He was notified July 30th as follows:

"Please arrange to attend an investigation... August 6, 1980, at 10:00 AM.

In this investigation you are charged with failure to protect your assignment as flagman for road and way work on right of way adjacent to main track near MP 383 while Train Order No. 717 (seven seventeen) on July 15, 1980, was in effect. This train order reads as

follows: 'Order No. 715 (seven fifteen) is annulled. Effective 7:30 (seven thirty) A.M. to 5:01 (five not one) P.M. daily except Saturday and Sunday. Contact flagman at MP 383 before passing this location.'

You are additionally charged with failure to carry out my instructions by clearing train No. 155 to pass work location without your knowing that any of the machinery working at this location is in the clear..."

As a result thereof, Carrier concluded Claimant to be guilty as charged. He was dismissed from service as discipline therefor.

The Board finds that Claimant was accorded the due process to which entitled under his discipline rule.

There was sufficient evidence adduced, including the admissions of Claimant, to support Carrier's conclusion as to Claimant's culpability.

The transcript reflects that Claimant was employed as Assistant Foreman on the Piedmont Division and was filling a flagging assignment at MP 383. The primary duties thereof were to flag trains to protect the men and equipment working on and adjacent to the tracks at MP 383 in accordance with Train Order No. 717, dated July 15, 1980. He had worked the assignment for weeks.

Claimant, who was assigned to report at MP 383 at 7:30 AM reported for duty at MP 410 at 7:45 AM. After finding no work being performed at that point, he telephoned Supervisor Reed and asked where he was to work. Claimant was told to work his assignment at MP 383, the assignment which he held prior to going on vacation for one week. At that time Claimant was just some 28 miles from his assignment.

Claimant left MP 410, at approximately 7:59 AM, and headed for MP 383 where he arrived at 8:33 AM. When he was about three miles from MP 383, Claimant heard Train No. 155 call a flagman at MP 383 on the company radio. Claimant, despite not being at his work location for more than a week and without knowledge of what work was or was not being performed at said location, answered on the radio. He cleared Train No. 155 to pass the work location. Thereafter, Claimant failed to call the employees or stop No. 155 until he arrived at MP 383.

Further, despite being instructed to contact the Chief Dispatcher each day, at work time, in order to assure that Train Order No. 717 was enforced, Claimant failed to contact said Dispatcher. He also failed to contact all Machine Operators to notify them of the approaching train and have them in the clear before permitting said train to pass.

The Board finds that the discipline assessed, when viewed in the light of the danger involved and the threat to the lives of the men and Carrier property by Claimant's actions, is not unreasonable. That nothing serious happened was not because of anything that Claimant did. In the circumstances, this claim will be denied.

Award: Claim denied.



A. D. Arnett, Employee Member



R. S. Spenski, Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Wilmington, Delaware, April 30, 1982.