

PUBLIC LAW BOARD NO. 2556

Award No. 22

Case No. 26
File MW-364

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Railway Company

Statement

of Claim: Claim on behalf of former Foreman M. W. Lightsey that he be reinstated with seniority and other rights unimpaired and be paid for all time lost as a result of his dismissal on May 7, 1981 for violation of Operating Rules GR-4, 1501, 1505, 1517, 1521, 1529, and 1531.

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, on December 9, 1981, was the Foreman in charge of Carrier's Gauging Gang No. 603. Said Gang was working in the vicinity of Saco, Alabama picking up scrap rail joints at M.P. 356, near Iverness, which were loaded on a pushcart coupled to a motor car and thereafter transported to an accessible location where they were unloaded.

About 11:40 AM Claimant took said motorcar and pushcar and with 3 Track Laborers riding in the motorcar and Machine Operator Skipper and Claimant Foreman riding on the pushcar and the motorcar pulled said pushcar to Saco where the employees purchased cold drinks for their dinner.

A reverse movement was made to leave Saco. The motorcar, with Claimant and the Machine Operator riding in the pushcar shoved said car across a highway upon Claimant's signal to the Operator of the motorcar to push through the crossing and it was struck by a pickup truck causing injury to Claimant and Machine Operator Skipper.

After Claimant had sufficiently recovered from the injuries sustained a formal investigation was held. Carrier concluded therefrom that Claimant was guilty of the charges placed against him. He was dismissed from service as discipline therefor.

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 that Claimant was in violation of the several Operating Rules cited in the Statement of Claim. Claimant was the Supervisor and in fact set up the movement and signaled the motorcar to shove through the crossing. The record does not support the allegation that Claimant had been acting at the instructions of Supervisor Jackson. Claimant admitted that he could have turned the motorcar around rather than make a backward movement. He could have turned the car around at the paved crossing at Saco and thus avoided the unnecessary reverse movement. Claimant clearly was responsible for allowing more people to be in the equipment and in particular allowing himself and the Machine Operator to be riding in the pushcar in violation of Operating Rule 531.

As noted by Third Division Award No. 22146 (Lieberman):

"It is well established that this Board may not substitute its judgment for that of Carrier in discipline cases, particularly with respect to penalty, unless it can be shown that Carrier's actions were arbitrary, capricious or discriminatory. Even though we were sitting in judgment we might well have decided on a different penalty, we have no basis for disturbing Carrier's conclusion herein."

The Board finds that Carrier in assessing the instant discipline, had taken Claimant's record into consideration. In such circumstances and in light of the incident and Claimant's conduct, we cannot conclude that Carrier had acted in an arbitrary, capricious manner. The claim will therefore be denied.

Award: Claim denied.

Bryce L. Hall,
Bryce L. Hall, Employee Member

David N. Ray
D. N. Ray, Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member

Issued September 10, 1983.