

PUBLIC LAW BOARD NO. 3445

Award Number: 47

Case Number: 47

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claimant, R. G. Marlar, allegedly charged with violation of Carriers Operating Rule GR-3, Rule M and alleged failure to follow instructions of Supervisor B&B Michael A. Hille. Dismissal of B&B Foreman Ralph G. Marlar was without just and sufficient cause and on the basis of unproven and disproven charges. Claimant should be reinstated with seniority and all other rights unimpaired and shall be compensated for all wage loss suffered and his record cleared of this charge.

FINDINGS

Claimant entered the Carrier's service on August 2, 1970.

By letter dated April 30, 1987, Claimant was directed to attend a formal investigation on charges he violated General Rule M, General Regulation GR-3, Southern Railway FALL Protection Procedures and his superior's instructions. The investigation was conducted on May 12, 1987. Claimant was dismissed by letter dated May 18, 1987 based on evidence adduced at the investigation.

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The parties met on June 4, 1987 to discuss alternatives to the assessed discipline. On June 29, 1987, the Organization advised the Carrier that Claimant had rejected the offer of reinstatement.

The issue to be resolved in this dispute is whether Claimant was dismissed for just cause under the Agreement; and if not, what should the remedy be.

The Fall Protection Guidelines and the relevant rules and regulations provide as follows:

FALL PROTECTION GUIDELINES

All B&B Forces performing work on bridges over 20 feet in height, or less, where hazardous conditions exist, will be guided by the following instructions.

All fall protection equipment will comply with Southern Railway Standards. Fall protection equipment such as belts, lanyards, etc. that are assigned to the individual will be inspected by that individual prior to each use.

The restraint support device must support a load of 5,400 lbs. per individual fastened to the support. Before attaching to the support after passing a train, or after work site has been left unattended, each individual will inspect the support to insure that it retains its structural integrity. Employees who remain fastened to the support structure while trains pass must position themselves on the permanent structure until the train has passed and then must determine that the support structure they are fastened to has not been damaged before this support is relied upon to restrain a fall.

The standard lanyard will not exceed six (6) feet in overall length. The point of attachment of the lanyard, where possible, should be above the person's waist and out of the way of the work area. When use of special lanyards, sala blocks, etc. is necessary, they will be used only after consulting with and permission is given by the responsible B&B Supervisor.

Restraint devices that are developed and constructed for Southern

Railway use will be thoroughly engineered and tested before such devices become standard B&B equipment.

The only exceptions to the above instructions are as follows:

- I. Bridge Inspections: Due to the nature and present techniques of this task, use of fall protection equipment is impractical.
- II. Persons standing, walking, or working between the rails or more than 4 feet from edge of a structure will not be required to use fall protection equipment.
- III. Pile driving: Men on top of the bridge performing pile driving are exempt from wearing fall protection equipment.

Preventing falls requires preplanning, safe work procedure discussions between workers and supervisors, and close supervision of the employees.

SAFETY RULES

B. Employees must be conversant with and obey the rules and special instructions. If in doubt as to their meaning, employees must apply to the proper authority for an explanation.

If bulletin instructions conflict with special instructions, the instructions bearing later date will govern.

M. Some platforms, bridges and other structures, switch stands and tunnels will not clear a person on the top or side of a car or engine. Employees must become familiar with these and other places and protect themselves from injury.

Employees must not do any work in a manner that will jeopardize their own safety or the safety of others. They must know that appliances, tools, supplies and facilities used in performing their duties are in proper condition. If not, they must have them put in order before using them. It is the duty of every employee to examine them to determine their condition.

Employees must expect the movement of trains, engines or cars at any time, on any track, in either direction.

GR-3. All employees must follow instructions from proper authority, and must perform all duties efficiently and safely.

Between March 2 and April 4, 1987, Claimant was assigned as a Bridges and Building Foreman supervising a gang repairing a bridge at CNO&TP

milepost 4.6. This operation consisted of replacing anchors and securing the anchors with reinforcement plates. The bridge under repair was in excess of 20 feet in height.

The Carrier's crews are required to use fall protection gear when working on bridges in excess of 20 feet in height. Further, when conducting certain maintenance and repair operations, a foreman must arrange to block off the track by use of a Form 23-A filed with the dispatcher for the area in question. It is unclear from the record the precise requirements for filing of a Form 23-A.

Claimant did not file a Form 23-A to secure flag protection. At various times, Claimant did not require gang members to wear fall protection gear. Claimant had difficulty in obtaining and filing the Form 23-A for this particular repair operation. General B & B Supervisor M. A. Hille made various confusing or ambiguous statements or instructions to Claimant during the course of the repair operation regarding the use of the Form 23-A.

The position of the Organization is that Claimant was dismissed unjustly because Claimant did not feel that a Form 23-A was necessary in this situation. The Organization describes the bridge in detail and contends, in essence, that there was ample space between and around the tracks on the bridge to provide Claimant and the gang protection from oncoming trains and from falls. No Form 23-A was filed because Claimant "considered himself and his men fully protected." By implication, the

Organization maintains that the ample space also obviated the need for fall protection restraints. The Organization concludes by asserting that the Carrier has not met its burden of proof.

The Carrier contends that Claimant was dismissed for just cause because he placed his gang at risk by violating safety rules and instructions. The Carrier contends that the record clearly proves that Claimant admitted he did not file a Form 23-A and that fall protection restraints were not used. The Carrier maintains that following these essential safety rules is not an option based on a foreman's discretion, but a requirement of the Carrier's rules that must be followed for the protection of all concerned. Indeed, without this protection, the gang is defenseless. The Carrier contends that dismissal is warranted because of the serious violation of the safety rules.

After review of the entire record, the Board finds that the more appropriate disposition is reinstatement with all but six months back pay restored.

The Carrier has established that fall restraints are required by its rules in the case of a bridge of the height here in question. It remains unclear when a Form 23-A is required and what safety factors make its filing unnecessary. The evidence indicates that Hille raised the issue and insisted on ensuring protection for the B & B gang. Claimant had an obligation to protect his gang from onrushing trains and gravity--both very powerful forces. Claimant evaluated the dangers and judged the protection adequate. However, Hille's insistence should have been met with an

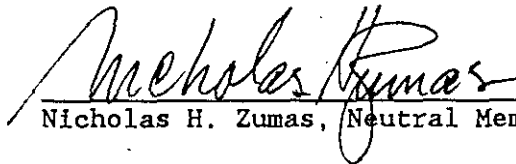
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overabundance of safety precautions: the filing of a Form 23-A and the use of fall protection restraints.

The record does not support the dismissal. Both sides share the fault in this matter, both initially and following the investigation. Both acted in an unharmonious and thoughtless fashion. The Carrier should have reinstated Claimant and allowed him to claim for back pay. Claimant should have returned to work when offered the opportunity to do so. Therefore, reinstatement with all but six months back pay restored is the more appropriate disposition.

AWARD

Claim disposed of per Findings herein.


Nicholas H. Zumas, Neutral Member


Carrier Member


Organization Member

Date: JUNE 12, 1989