

PUBLIC LAW BOARD NO. 3445

Award Number: 7
Case Number: 7

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

SOUTHERN RAILWAY CORPORATION

STATEMENT OF CLAIM

Laborer Joe L. Hunt, 2512 14th Avenue, Columbus, Georgia 31906, was dismissed from service for allegedly failing to furnish proper flag protection. Employee requests pay for time lost, with seniority and vacation rights unimpaired.

FINDINGS

By letter dated May 24, 1982, Claimant was informed that he was being charged with violation of Carrier's Rules GR-4, 99(a), and 1511 in connection with his failure to furnish proper flag protection on May 20, 1982. A hearing was held for the purpose of investigating the charges on June 11, 1982. On the basis of the evidence adduced at the investigation, Carrier determined that Claimant had in fact violated the Rules as charged, and that he should be dismissed. The Organization filed a claim protesting Carrier's action and

requesting that Claimant be reinstated with lost pay and with seniority and all other rights unimpaired. The claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Board for resolution.

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

On the morning of May 20, 1982, Claimant was given the assignment of Flagman on Track Gang AFE-241. On that day, the track gang was installing switches on the main line near Oglethorpe, Georgia. Train movement in the area was to take place over a passing track which bypasses the stretch of main line on which the switch installation took place. Track Foreman S.L. Lane sent Claimant to the western end of the passing track with orders to flag all trains approaching the construction area from that direction. In addition, Claimant was issued written flagging instructions on Form 896. The flagging instructions stated that Claimant was to hold all eastbound trains at the flagging point until notified otherwise by the Track Supervisor. It was also Claimant's responsibility to have the engineers of all eastbound trains read and sign the flagging instructions.

Between 9:00 and 9:30 AM on that morning, Train Number 76 approached

from the east and stopped where Claimant was stationed. According to S.A. Metcalf, Engineer on Train Number 76, Claimant asked if the train was going on to the side track to pick up cars, and then permitted the train to proceed when he was answered in the affirmative. Train 76 proceeded eastbound on the main line and was flagged to a stop by Foreman Lane some twenty rail lengths from the switch installation site.

Operating Rule GR-4 states that all employees "must follow instructions from proper authority, and must perform all duties efficiently and safely." Operating Rules 99(a) and 1511 require flagmen with written flagging instructions to obtain the signatures of engineers on such instructions. In addition, Rule 1511 requires that engineers be informed of the location and nature of any obstructions when stopped by a flag.

At the investigation, Claimant admitted that he did not obtain Engineer Metcalf's signature on the flagging instructions, and that he allowed the train to proceed without further instructions from Supervisor Webb. Claimant also testified that he allowed the train to proceed because Foreman Lane had instructed him to allow the train onto the side track so that it could pick up cars. However, Claimant admitted that Foreman Lane had not specifically instructed him to withhold the form from the engineer on Train Number 76. In

addition, when asked whether he should have given the form to the engineer, Claimant replied, "I guess so. I believe I should have."

It is evident from the record that Claimant understood that trains were not to be allowed to run on the main line where the switches were being installed, and that he nevertheless permitted Train Number 76 to proceed eastbound from the flagging point without making sure the engineer understood that the train was not to move on the main line. It is also evident that Claimant failed to inform the engineer of the obstructions on the main line, and that Claimant failed to comply with the rules governing written flagging instructions.

The Organization argues that this incident was caused by a "misunderstanding" between Claimant and Engineer Metcalf. However, the "misunderstanding" would not have occurred if Claimant had complied with the relevant Operating Rules. It must therefore be held that Claimant is culpable as charged.

The Organization argues further that Claimant's past record may not be considered since it was not discussed during the investigation. There is no evidence that Claimant was prejudiced in any way by the lack of discussion regarding his work record. In addition, it is well established that an employee's record may be reviewed for the purpose of determining what discipline is proper. For these reasons, it must be held that consideration of Claimant's work record

was proper.

Claimant's record shows that he has been disciplined three times in the space of approximately eight years. The penalty of dismissal should be reserved for employees who have clearly shown an inability or unwillingness to properly perform their duties. Though Claimant negligently performed his flagging duties on the morning in question, it is the opinion of this Board that his offense, even when considered together with his past record, does not clearly show Claimant to be unwilling or unable to properly perform his assigned duties. Claimant should be given one more chance to improve his work performance, and the discipline imposed shall therefore be reduced to a lengthy suspension.

AWARD

Carrier shall reinstate Claimant to his former position immediately with seniority unimpaired but with no pay for time lost.


Neutral Member


Carrier Member


Organization Member

DATE: Nov. 13, 1974