

PUBLIC LAW BOARD NO. 3558

PARTIES) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SOUTHERN PACIFIC TRANSPORTATION CO. (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of San Antonio Division
Machine Operator Frank O. Fuentes for 160
hours at his straight time rate of pay account
being unjustly suspended." (MW-85-95)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

It is unquestioned from review of the transcript of the company hearing that Claimant, an employee of Carrier for four years, was admittedly responsible for violation of Rule M869 when he permitted a ballast regulator which he was operating to collide with the rear end of a tamper on May 1, 1985. The dispute, therefore, concerns a determination as to whether discipline as administered by the Carrier represented disparate treatment when compared with discipline assessed other Carrier employees for a like or similar offense.

As concerns its contention with respect to discipline sanctioned by the Carrier in similar cases, the Organization states:

"[In] two cases where machines were involved in collisions the operators that were at fault were issued 10 day suspensions in one case and 15 day suspension in another case. In one accident where the traveling mechanic was welding on a ballast regulator, the machine caught fire, burned completely and the mechanic was assessed a 10 day suspension. Due to this we clearly feel that Mr. Fuentes was disciplined excessively.

It is further our position that testimony in the transcript clearly indicates that the damage to the machines involved in this accident was only \$500.00, and the damage to the machines involved in the accidents referred to above was much greater and in the case of the fire the machine was a total loss no less than twenty-five thousand dollars."

In response to the Organization's assertion that the discipline was harsh and excessive, the Carrier maintains that it was indeed very lenient as concerns the extent of discipline imposed.

While the Carrier did not refute the Organization's contentions relative to lesser discipline having been imposed in other cases of a like or similar manner, it argued to this Board that it did not find it appropriate on the property to have commented upon such matter since the Organization had not offered names of the employees involved in the past cases, the dates of the incidents, or developed fully the circumstances surrounding each case.

The Board is not persuaded by the Carrier argument. We believe that the Carrier was obliged to have responded to such allegations in a positive manner while the claim was being handled on the property. If it was of the opinion that it needed additional information, the Carrier should have so indicated such a need to the Organization and not left the inference that there was indeed the appearance of disparate treatment with respect to Claimant.


In the circumstances of record, and absent any showing of record that the Claimant has a past disciplinary record, it will be the Board's finding that discipline be reduced from a 27 calendar day suspension to a 15 calendar day suspension for the period commencing May 6, 1985, and that Claimant be compensated for all lost time beyond such period of suspension from service.

AWARD:

Claim sustained to the extent set forth in the above Findings.


Robert E. Peterson, Chairman
and Neutral Member


C. B. Goyne
Carrier Member


M. A. Christie
Organization Member

Branson, MO
May 19, 1986