

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 Machine Operator P. D. Green requesting that P. D. Green's work record be cleared of the charge of violating Southern Pacific Transportation Company Rules 801 and 802 on July 15, 1985, in addition to 80 hours pay at Spike Puller Operators respective pro rata rate, and all overtime that P. D. Green's assigned machine may have earned during the time of his suspension from service." (MW-85-116)

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.

Testimony adduced from several witnesses at a company hearing accorded Claimant clearly supports the conclusion that Claimant was guilty of failure to follow the instructions of his foreman relative to setting a spike in the proper hole so as to hold the gage of rail, and to also being guilty of refusing to thereafter pull and reset the spike as directed.

The Claimant being guilty of insubordination and indifference to duty, the only question at issue remains whether the discipline assessed, a suspension of 10 work days, was proper and not an abuse of Carrier discretion in such matters.

The Board is not persuaded that Claimant, working as a machine operator, could not be directed to perform the work requested of him. Actually, the record shows that Claimant had readily admitted that he has been required to perform such work in the past.


The Board is likewise not convinced, as the Claimant urges, that he had been singled out for the work while others were standing around. Moreover, even assuming arguendo that this was a fact, it did not give Claimant the right to refuse to follow an order. If he was of the opinion he was being harassed, the proper procedure for Claimant to have followed to protest such action would have been to file a grievance under the applicable rules.

In the circumstances of record, the claim will be denied.

AWARD:

Claim denied.


Robert E. Peterson, Chairman
and Neutral Member


C. B. Coyne
Carrier Member


M. A. Christie
Organization Member

Houston, TX
August 29, 1986