

PUBLIC LAW BOARD NO. 3558

PARTIES)
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
) SOUTHERN PACIFIC TRANSPORTATION COMPANY
) EASTERN LINES

AWARD

STATEMENT OF CLAIM:

- "1. Carrier violated the effective Agreement when System Machine Operator D. W. Hicks was unjustly dismissed and did not receive a fair and impartial investigation.
2. Claimant Hicks shall now be paid for all time lost beginning March 18, 1986, and on a continuing basis until such time as he is allowed to return to service, with vacation, seniority and all other benefits due him restored intact." (MW-86-57)

OPINION OF BOARD:

By letter dated March 25, 1986, Claimant, a Machine Operator with approximately seven years of service who was assigned to rail gang R-6, was suspended pending formal investigation as a result of a confrontation with an Assistant Foreman on March 18, 1986. After investigation ultimately held on April 1, 1986, and by letter dated April 9, 1986, Claimant was dismissed from service for being quarrelsome in violation of Rule 607, Item 6.

On March 18, 1986, Claimant was operating a speed swing removing rail in the vicinity of Paxton, Mile Post 184. Claimant operated the equipment on the previous day. Prior to that, the last time Claimant operated a speed swing was for a two day period in 1982.

A confrontation occurred between Claimant and Assistant Foreman J. Morehouse. According to Morehouse, Claimant was not safely operating the speed swing and Morehouse gave Claimant several instructions in the proper use of the equipment.

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Thereafter, an argument arose between Morehouse and Claimant wherein Morehouse asserts that Claimant used profane language and implied a threat (conduct which Claimant denied). Assistant Roadmaster T. B. Brannon separated Claimant and Morehouse. Brannon corroborated Morehouse's version of the implied threat testifying that Claimant told Morehouse "If I get something in your face, something is going to follow." The instant charges followed.

Initially, we must reject the Organization's argument that Claimant was not afforded a fair and impartial hearing since the same individual was the charging officer and officer conducting the investigation. First, Article 14 does not prohibit the procedure utilized by the Carrier. Second, as we have ruled before, in situations where a Carrier official plays a multiple role in the disciplinary process, a case by case analysis must be undertaken to determine if the employee's due process rights have been violated. Pubic Law Board No. 3558, Award 52. See also Special Board of Adjustment No. 280, Award 218. After examining the total record and further considering that subsequent appeals were decided by individuals other than the Carrier official whose multiple role has been challenged, we cannot say that Claimant's due process rights were violated.

With respect to the merits, we find substantial evidence in the record to support the Carrier's conclusion that Claimant violated Rule 607, Item 6 by acting in a quarrelsome fashion. However, we are of the opinion that dismissal was too harsh a discipline. According to the Carrier, Claimant's prior record since 1981 shows that Claimant has been issued a letter concerning an absence; another letter regarding a violation of Rules M866, 810 and 802; 40 demerits for violation of Rule 810 and a dismissal from service which was reduced to reinstatement without compensation for time lost. Considering Claimant's prior record and the nature of the incident in this case, which incident, although clearly demonstrating a rule violation by Claimant, may have been somewhat fueled by Morehouse's handling of Claimant's inexperience with the speed swing and Claimant's difficulty in operating that equipment, we shall require that Claimant be returned to service

with seniority and other benefits unimpaired, but without compensation for time lost.

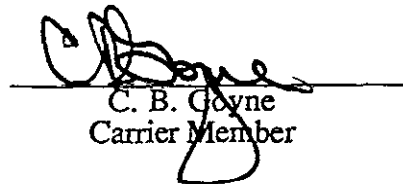
Return to service shall be on a last chance basis.

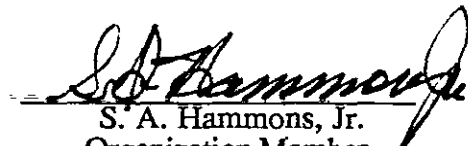
AWARD:

Claim sustained in accordance with opinion. Claimant shall be returned to service with seniority and other benefits unimpaired, but without compensation for time lost.

Return to service shall be on a last chance basis.


Edwin H. Benn, Chairman
and Neutral Member


C. B. Goyne
Carrier Member


S. A. Hammons, Jr.
Organization Member

Houston, Texas
November 24, 1987