

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 Claude Jordan, Jr. was demoted from Track Foreman to track laborer and was suspended from service March 3, 1986 through March 14, 1986.

2. Claimant Jordan shall now be reinstated to his former position of track foreman with his record cleared of alleged violation of Southern Pacific Transportation Company Rule 268, in addition to all pay lost as track foreman commencing March 3, 1986 and to run concurrently through and including March 14, 1986, in addition to the difference in rate of pay between a track foreman and a track laborer commencing March 17, 1986, and to run concurrently until Mr. Jordan is restored to the position of track foreman." (MW-86-67-Jordan)

OPINION OF BOARD:

Claimant holds a seniority date of September 8, 1977. By letter dated March 7, 1986, Claimant was suspended for ten working days from March 3, 1986 until March 17, 1986 for violating Rule 268 in that while employed as a Track Foreman, he occupied the Salix Block with an on-track car without proper authority from the Train Dispatcher. By letter dated March 14, 1986, Claimant was disqualified as a Track Foreman and Assistant Foreman effective March 17, 1986 and was permitted to exercise his seniority as a Track Laborer. By letter dated March 24, 1986, Claimant requested a hearing concerning his disqualification as Track Foreman and Assistant Foreman as set forth in the Carrier's March 14, 1986 letter. After hearing eventually held on April 11, 1986, and by letter dated April 16, 1986, the Carrier adhered to its disqualification of Claimant as Track Foreman

and Assistant Foreman.

The record developed at the April 11, 1986 hearing shows that on February 27, 1986, Claimant was occupying the Salix Block without proper authority from the train dispatcher; was spoken to by his Roadmaster several times during October 1985 and February 1986 concerning his failure to comprehend Direct Traffic Control (DTC) rules; received discipline in addition to the March 1986 suspension on January 23, 1984 (45 demerits for improper display of train order) and October 18, 1985 (45 demerits for failing to timely release work and clock time in the Salix block); received an oral admonishment from his Roadmaster for not performing well on an efficiency test for DTC rules; had oral complaints from employees concerning his problems with DTC; was assessed by his Train Dispatcher as having difficulty with the DTC rules; and was generally assessed by Carrier officers as unqualified to take employees and equipment to work in DTC territory.

First, we agree with the Carrier that we have no authority to pass upon the propriety of the ten day suspension imposed in March 1986. Article 14(A)2 requires the Claimant to make a written request for an investigation within 10 days and if no such request is made, "the discipline will be considered as accepted." We find no such request in this record concerning the suspension. Claimant's March 24, 1986 request for a hearing was outside of the required time limit and further did not concern the suspension but only concerned the disqualification of Foreman and Assistant Foreman.

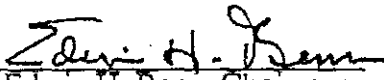
Based upon Claimant's exhibited difficulties with the DTC rules, as well as his prior difficulties, this record supports Claimant's disqualification. Under the facts presented, we find that the Carrier acted in a timely fashion when it notified Claimant on March 17, 1986 of its determination.


However, under the circumstances, we do not believe that Claimant should remain disqualified from the Assistant Foreman's position. Therefore, providing that Claimant can successfully pass the Carrier's Book of Rules exam, Claimant's seniority as an Assistant Foreman shall be restored. In light of the exhibited difficulties Claimant had with the DTC

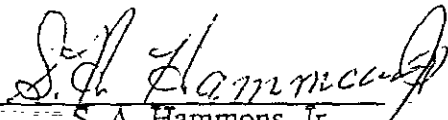
Rules and the importance of understanding and properly adhering to those Rules, we shall not award compensation for time lost as a result of the disqualification at issue.

AWARD:

Claim sustained in accordance with Opinion. Claimant's seniority as an Assistant Foreman shall be restored without compensation for lost wages provided that he successfully passes the Carrier's Book of Rules exam.

  
Edwin H. Benn, Chairman  
and Neutral Member

  
C. B. Goyne  
Carrier Member

  
S. A. Hammons, Jr.  
Organization Member

Houston, Texas  
July 20, 1987