AWARD NO. 52
CASE NO. 52

PUBLIC LAW BOARD NO. 3558

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

AWARD

STATEMENT OF CLAIM:

"1. Carrier violated the effective Agreement when Machine Operator S. Broussard was unjustly dismissed from service and was denied a fair and impartial hearing.

2. Claimant Broussard shall now be reinstated to his former position with all seniority, vacation rights and any other rights accruing to him unimpaired, including his personal record cleared of the charge dated August 19, 1986, in addition to all pay lost commencing August 6, 1986 and to run concurrently until such time that he is restored to service." (MW-86-125-Broussard)

OPINION OF BOARD

Claimant, a Machine Operator with a 1979 seniority date, sustained a back and neck injury while on duty on August 5, 1986, which injury caused Claimant to be hospitalized. During the period August 6 - 19, 1986, Carrier officers made eight attempts to have Claimant complete a written report concerning the accident (Form 2611). Claimant or his family members gave a number of reasons for the failure to complete the form even after he was released from the hospital. Those reasons involved an initial inability to do so on the day following the accident as a result of the accident; sleeping; unavailability due to a doctor's appointment and culminating on August 19, 1986 when Claimant's wife stated that the form would not be completed until their attorney was present. By letter dated August 19, 1986, Claimant was charged with violating Rule E which requires a written report to promptly follow accidents or personal injuries. After hearing on August 28, 1986

(wherein Claimant submitted the completed form) and by letter dated August 29, 1986, Claimant was dismissed from service.

The Organization has raised a series of procedural allegations that we find to be lacking in merit. First, the charge letter of August 19, 1986 was brought within the required ten day time limit in Article 14(A)2 inasmuch as on that date it became apparent that Claimant was acting in less than a prompt fashion.

Second, we find the charge sufficiently specific under Article 14(A)1 to inform Claimant of the nature of the allegations against him and to permit him the opportunity prepare his defense to those allegations. See Third Division Award 26276.

Third, we find no evidence in the record to support the assertion that the investigation was conducted for the sole purpose of intimidating Claimant or to otherwise defeat his rights under the Federal Employers Liability Act.

Fourth, the fairness of the hearing was not compromised by the fact that the Hearing Officer precluded testimony from witnesses whose testimony, if given, concerned the accident or a refusal to submit the form. That evidence was immaterial to the charge which involved the failure to promptly submit the accident form and the Carrier never took the position that Claimant totally refused to submit that report.

Fifth, the fact that the Carrier officer making the dismissal was the same individual denying the first appeal is not a basis in this case to sustain the Claim. We find nothing in the portions of the controlling Agreement that prohibits the multiple roles of Carrier officials in the decision making and first level appellate process as was exhibited by the facts herein. On the contrary, Article 14(G) specifically provides for notice of appeal to the official rendering the decision. While awards do exist wherein claims were sustained where the first step grievance appeals officer was also the same person assessing the discipline (see e.g., Third Division Award 24476), even where the language of the Agreement is silent (which it is not here), the key, in our opinion, is not an automatic reaction but an individual analysis in each case to determine whether the multiple roles

played by the Carrier officer prejudiced the employee's due process rights. See Second Division Award 9405; Fourth Division Awards 4115; 4095; 3907; 3880; 3879. Here, after the first level of appeal was denied, the Organization took further appeal to the Carrier's Manager of Labor Relations who reviewed the facts and arguments and ruled accordingly. We cannot say in this case that Claimant's due process rights were prejudiced.

With respect to the merits, we are satisfied that substantial evidence exists in the record to support the Carrier's decision to impose discipline. The record reveals that during the 14 days immediately following the accident, Carrier officers made eight separate attempts to obtain the completed form. A number of excuses were given which the Carrier concluded to be evasive of the obligation to promptly complete the form as required by Rule E and not because of an inability to complete the form. The fact that Claimant provided the written form at the hearing does not excuse him of his obligations to promptly complete the form. Rule E's obligations are clear and simple. Claimant was obligated to furnish the report in a prompt fashion when he was able to do so. See Third Division Award 20682. We find nothing in this record to support an argument that Claimant was unable to complete the report as required and to do so in a prompt fashion.

However, under the circumstances, we are of the opinion that dismissal was too harsh a discipline in this case. We shall therefore require that Claimant be returned to service with seniority and other benefits unimpaired but without compensation for time lost.

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.

Edwin H. Benn, Chairman
and Neutral Member

C. B. Goyne
Carrier Member

S. A. Hammons, Jr.
Organization Member

Houston, Texas
July 20, 1987