

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 B&B Carpenter R. G. Crawford was unjustly suspended from service.

2. Claimant Crawford shall now be paid for 240 hours at his straight time rate of pay and his personal record be cleared of all charges."
(MW-86-130)

OPINION OF BOARD

At the time of the incident involved in this Claim, Claimant was a B&B Carpenter with approximately six years of service. As a result of charges dated August 29, 1986, hearing on September 10, 1986 and letter dated September 18, 1986, Claimant was suspended for 30 working days for violating Rules I, 607 and 608.

The record reveals that on August 21, 1986, Claimant's gang was moving a load of shims. Assistant Foreman A. P. Sczech noticed Claimant on the boom platform where the operator normally stands. Sczech told Claimant that he was going to operate the boom and instructed Claimant to get down from the platform. In giving the instruction, Sczech told Claimant to "move your big butt". Shortly thereafter, as two other employees were centering a cable on a load that was about to be lifted and Sczech was readying to lower the jack, Claimant stepped towards Sczech. Claimant testified that he told Sczech that it "looks like you have gained a few pounds too." At the same time, Claimant tapped Sczech on the stomach. As a result of being tapped on the stomach by Claimant, Sczech flinched and pulled a lever that lowered the jack striking Claimant on the head. As a result of being

struck by the jack, Claimant temporarily lost consciousness.

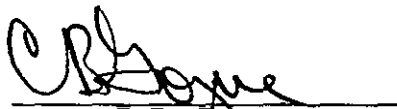
Rule I requires employees to exercise care to prevent injuries. Rule 607 prohibits careless and negligent conduct. Rule 608 prohibits practical jokes. On the basis of the record we are satisfied that substantial evidence exists showing that Claimant's conduct fell within the prohibitions of those rules. Under the circumstances, Claimant had no reason to tap Sczech on the stomach, especially when Sczech was operating equipment.

However, we are of the opinion that the amount of suspension imposed was excessive. Considering the nature of the incident and the fact that Claimant's record appears to be satisfactory along with the testimony that Claimant normally performs his duties in a safe manner, we shall reduce the suspension from 30 to 15 days. Claimant shall be compensated accordingly.

AWARD:

Claim sustained in accordance with Opinion. Claimant's suspension shall be reduced from 30 to 15 days and he shall be compensated accordingly.


Edwin H. Benn, Chairman
and Neutral Member


C. B. Goyne
Carrier Member


S. A. Hammons, Jr.
Organization Member

Houston, Texas
August 20, 1987