

PUBLIC LAW BOARD No. 3626

AWARD No. 5

Docket No. 5

Case 84-8

**PARTIES TO DISPUTE:**

Southern Pacific Transportation Company  
(Eastern Lines)

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

1. Carrier violated the effective Agreement when Houston Division Foreman Darrell F. Swoboda was unjustly dismissed November 23, 1983.
2. Claimant Swoboda shall now be reinstated to his former position with pay for all time lost, with all seniority, vacation and all other rights restored unimpaired commencing November 23, 1983 and to run concurrently until such time as he is reinstated.

OPINION OF THE BOARD

The Claimant was dismissed from service for failure to afford proper protection before obstructing and disturbing the mainline track. The Employee requested a hearing and subsequent to the hearing the Carrier affirmed its decision to dismiss.

There is no question that the rules require appropriate flag protection nor is there any question that the Employee was instructed to provide protection.

Moreover, there is very little question, after a review of the record, that the Claimant did fail to provide the protection required. At one point he indicated that he

was in a hurry and neglected to put the flag up and there is also testimony indicating an effort being made to finish a repair project as rapidly as possible, which resulted in his utilizing all available men on that project. In any event, the flag protection was not afforded.

The only question which remains for our review is the severity of the disciplinary action taken. The Employee had approximately ten years of service at the time of the incident and, although his record was not totally clear, it certainly was not an atrocious disciplinary record.

There is some question raised as to whether or not the prior disciplinary record was properly raised for a consideration on the property but, in any event, the Carrier conceded that the individual had been a good Employee. Further, this Board is of the view that while the Claimant was guilty of the offense his action was not one of negligence brought about by disregard for the safety of himself and others but, rather, was prompted by other considerations.

Although we do not minimize the safety aspects of providing flag protection, we will set aside the termination and restore the Employee to service. In this regard, an August 13, 1984 letter was forwarded to the Carrier authorizing restoration of this individual.

#### FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

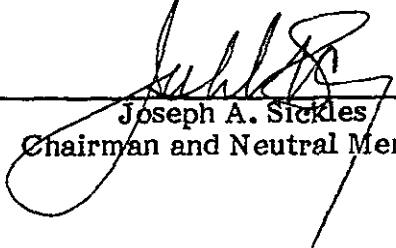
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.


The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

1. Termination set aside.
2. The Carrier shall restore the Claimant to service in accordance with the Neutral Referee's August 13, 1984 letter. There shall be no loss of seniority or other benefits but the Claimant shall not be reimbursed for compensation lost during the period of the suspension.
3. Carrier shall comply with this Award within thirty (30) days of the effective date hereof.

  
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Joseph A. Sickles  
Chairman and Neutral Member

  
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C. B. Goyne  
Carrier Member

  
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M. A. Christie  
Employee Member

10-19-84

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Date