

PUBLIC LAW BOARD No. 3626

AWARD No. 7

Docket No. 7

Case 84-55

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 Machine Operator E.G. Harrison was unjustly dismissed January 19, 1984.
2. Claimant Harrison shall be reinstated with pay for all time lost, with seniority and all other benefits restored intact and with dismissal charges removed from his record.

OPINION OF THE BOARD

The Claimant was dismissed from service for allegedly running over a derail and derailling the Regulator. The Employee requested a hearing and, subsequent to that hearing, the Carrier affirmed the dismissal from service.

There is no question that the Employee ran over a detail with the Regulator. The Claimant testified that he had been furloughed for a year and he had been assigned to the Regulator for only four days at the time of the accident. He was given instructions on the machine but had "never operated" a machine like the one in question. Moreover, even though he had been assigned to the machine for four days he had only worked on the

machine for a very short period of time prior to the accident. The organization asserts that he was attempting to follow instructions and signals as they were given to him.

Based upon our review of the entire record we are of the view that there is evidence sufficient to show that the Employee did, indeed, run over a derail and that there was a degree of negligence on his part in doing so. We are sensitive to the fact that the Employee (although he was indicating that he was having no problem with the machine) was, in fact, new to this operation and possibly was not fully cognizant of the propensities of the machine.

We are inclined to give the Claimant a benefit of the doubt in this case and restore him to service. However, we do not feel that it is appropriate to require the Carrier to compensate him for back pay lost.

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.

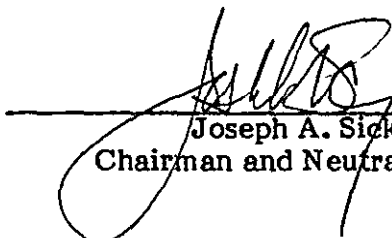
The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

1. Determination set aside.
2. The Claimant should be restored to service, in accordance with a letter from the Neutral Referee dated August 13, 1984. The restoration shall be with retention

of seniority and other benefits but without reimbursement 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.



Joseph A. Sickles
Chairman and Neutral Member



C. B. Goyne
Carrier Member



M. A. Christie
Employee Member

10-19-84
Date