

PUBLIC LAW BOARD NO. 4373

PARTIES	SOUTHERN PACIFIC TRANSPORTATION CO. )	
	(EASTERN LINES) )	
	)	AWARD NO. 1
TO	AND )	
	)	CASE NO. 1
DISPUTE	BROTHERHOOD OF MAINTENANCE OF WAY )	
	EMPLOYES )	

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement when Dallas Division Track Foreman E. D. Michalk was assessed 40 demerits for the alleged violation of Carrier Rules 1051 and 607-Conduct.
2. The 40 demerits assessed against Mr. Michalk shall now be removed and his personal record be cleared of this alleged violation.

HISTORY OF DISPUTE:

Claimant was employed as Dallas Division Track Foreman at the time of the incident giving rise to the claim in this case.

On August 19, 1986 Carrier officials were taking count of monthly log books, which should have been submitted by the fifth of the month, and discovered the absence of Claimant's log books for the month of July. On August 20, 1986 Carrier officials instructed Claimant to submit his log books for July because there would be an audit in the near future. Claimant was to submit the log books on August 22, but he did not do so until September 2.

The Carrier notified Claimant to appear for a formal investigation. By letter of November 3, 1986 the Carrier notified Claimant that as a result of evidence adduced at the investigation he had been found guilty of violating Rule 1051 providing that foremen ". . . must keep records and make

prescribed reports of labor and materials" and Rule 607 providing that "[I]ndifference to duty, or to the performance of duty, will not be condoned." The letter also informed Claimant that he was assessed forty demerits.

The Organization grieved the discipline. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and it is before this Board for final and binding determination.

FINDINGS:

The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act, as amended, 45 U.S.C. §§151 et seq. The Board further finds that the parties to the dispute, including Claimant, were given due notice of the hearing in this case.

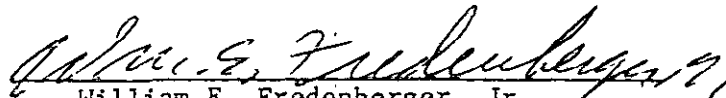
We believe the record in this case substantiates Claimant's guilt. While it is true that Claimant's testimony contradicts that of Carrier witnesses in several material respects, the Carrier's point is well taken that the resolution of the credibility of witnesses who testify at an investigation is the province of the Carrier absent any evidence of abuse of discretion. The record in this case contains no such evidence. The Organization's argument that the Carrier was in possession of Claimant's July log books for at least a week before the audit misses the point. Claimant was instructed to submit the log books by a certain date and he failed to do so. For the same reason we find no significance to the fact

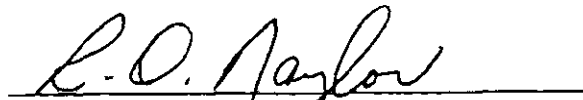
that other foremen may have submitted their log books late without incurring discipline.

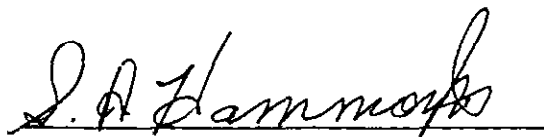
We cannot agree with the Organization that forty demerits constituted harsh or excessive discipline in this case. While it is true, as the Organization emphasizes, that Claimant is an employee with lengthy service, as we have found above the record substantiates Claimant's guilt. Demerits are appropriate under such circumstances.

AWARD

Claim denied.

  
William E. Fredenberger, Jr.  
Chairman and Neutral Member

  
R. O. Naylor  
Carrier Member

  
S. A. Hammons, Jr.  
Employee Member

DATED: June 28, 1988