

PUBLIC LAW BOARD NO. 4373

|         |   |              |
|---------|---|--------------|
| PARTIES | SOUTHERN PACIFIC TRANSPORTATION COMPANY ) |              |
|         | (EASTERN LINES) )                         |              |
|         | )   | AWARD NO. 10 |
| TO      | AND )                                     |              |
|         | )   | CASE NO. 12  |
|         | BROTHERHOOD OF MAINTENANCE OF WAY )       |              |
| DISPUTE | EMPLOYES )                                |              |

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement when Track Laborer M. W. Stephens was unjustly demoted from his position as laborer driver to track laborer.
2. Claimant Stephens shall now be reinstated to his former position of laborer driver with his record cleared of alleged violations of Southern Pacific Transportation Company Rules that part of Rules 600 and 607, in addition to all pay lost as laborer driver commencing June 18, 1987 and to run concurrently through and including July 2, 1987, and to run concurrently until Mr. Stephens is restored to the position of laborer driver.

HISTORY OF DISPUTE:

On June 17, 1987 Claimant was working as a Laborer Driver assigned to I&R Gang 443 with his foreman collecting trash and debris from the track between MP Junction and Gifford, Texas. The foreman had informed Claimant also to watch for any hazardous conditions on the track. In the vicinity of milepost 8.3 Claimant passed over a broken rail, failing to note or detect the defect. Approximately thirty to forty minutes later the Roadmaster followed Claimant and his foreman on the track and ran over the broken rail easily detecting it. The Roadmaster issued an order restricting the speed of trains over that portion of the rail to ten miles per hour until the condition could be corrected.

By letter of June 18, 1987 the Carrier notified Claimant to appear for formal investigation on the charge that he had operated over a broken rail and suspended him from service pending results of the investigation. The investigation was held on July 9, 1987. By letter of July 14, 1987 the Carrier notified Claimant that he had been found guilty of the charge, that he was suspended from service for a period of fifteen days and that he was disqualified as a laborer driver.

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 also finds it has jurisdiction to decide the dispute in this case. The Board further finds that the parties to the dispute, including Claimant, were given due notice of the hearing in this case.

The first issue to be resolved is whether the record in this case contains evidence substantiating Claimant's guilt. The Carrier emphasizes that it is part of Claimant's duties to inspect the rail for defects and hazards and that those duties were not suspended simply because he was instructed to collect trash and debris. Moreover, the Carrier points out, Claimant was instructed by his foreman to look for hazardous conditions on the rail. The Organization contends that Claimant was placed in an untenable

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position inasmuch as the Carrier was requiring him to drive the truck, collect trash and debris and inspect the track for defects. The Organization contends that it was impossible for Claimant to do all three.


We believe the record substantiates Claimant's guilt. It was part of his duties to observe and detect defects on the track. As part of his duties he assists with track inspection. Moreover, the foreman instructed him on this particular day to look for hazardous conditions on the track. Additionally, Claimant reasonably could not have failed to detect the broken rail, inasmuch as the Roadmaster detected the break when his vehicle passed over it by the way the vehicle reacted. Finally, the Claimant was extremely evasive during the investigation in answering questions propounded by the Carrier. As the Carrier correctly argues, an accused who does so invites the Carrier to draw adverse inferences from his testimony.


With respect to the measure of discipline we find that the fifteen-day suspension was warranted and appropriate. However, we do not reach the same conclusion with respect to Claimant's disqualification as a laborer driver. Such disqualification essentially has precluded Claimant from working for the Carrier. Such a result is not warranted.

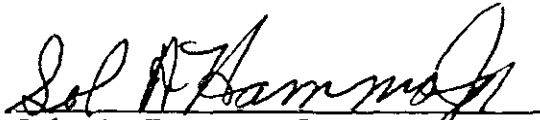
#### AWARD

Claim sustained to the extent that Claimant's disqualification as a laborer driver shall be removed and Claimant shall be compensated for all time out of service since his disqualification as a laborer driver from July 2, 1987 to the present minus outside earnings and unemployment benefits received by Claimant during that period. Claim denied in all other respects.

The Carrier shall make this award effective forthwith.

  
 William E. Fredenbergen, Jr.  
 Chairman and Neutral Member

  
 R. O. Naylor  
 Carrier Member

  
 Sol. A. Hammons, Jr.  
 Employee Member

DATED: