

PUBLIC LAW BOARD NO. 4373

PARTIES	SOUTHERN PACIFIC TRANSPORTATION COMPANY )	
	(EASTERN LINES)	
TO	AND	AWARD NO. 22
DISPUTE	BROTHERHOOD OF MAINTENANCE OF WAY )	CASE NO. 26
	EMPLOYEES	

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement when Machine Operator J. M. Baltazar was unjustly suspended for 168 hours and did not receive a fair and impartial hearing.
2. Claimant Baltazar shall now be paid for 168 hours at his respective straight time rate of pay, plus any compensation he may have received.

HISTORY OF DISPUTE:

On January 5, 1988 while driving a welding truck, Machine Operator Baltazar was responsible for knocking down an electric wire and breaking a water pipe at Dayton, Texas, and failed to report the incident.

By letter dated January 7, 1988, Claimant was issued a twenty-nine (29) day suspension for his responsibility in alleged violation of Rules 1E, 1041, 1041, 607, 609, Rules for the Safe Operation and Care of Automotive and Trailer Equipment - Part D, and Safety Rule #2. After Claimant requested an investigation, which was held January 26, 1988, Carrier affirmed the disciplinary action by letter dated February 4, 1988.

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

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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 Claimant, at the time of the incident, was working with Assistant Foreman McCartney. After Claimant moved the truck, Mr. McCartney told Claimant he had hit a wire. Asst. Foreman McCartney investigated the incident and reported everything was alright. The record indicated Mr. McCartney did not know about the broken pipe until the following morning. However, the Organization alleges that the Carrier failed to call Mr. McCartney as a witness and that he would have had pertinent information with respect to the charge. The Board must agree with the Organization in this regard. Claimant Baltazar acknowledged the fact that he knocked down an overhead wire, but denied causing the broken pipe at Dayton. No facts were presented to make this Board conclude otherwise.

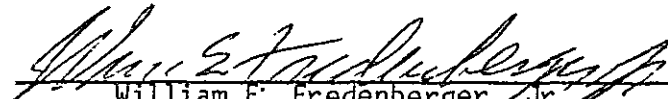
On the basis of the record in this case we believe there was substantial evidence adduced to support Carrier's finding of guilt, and discipline was warranted. However, under the circumstances we find that the 29-day suspension assessed Claimant Baltazar was excessive.

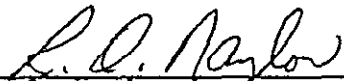
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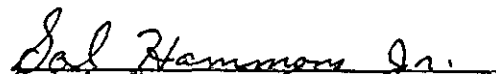
AWARD

Claim sustained to the extent that twenty-nine (29) day suspension shall be reduced to a five (5) day suspension and Claimant shall be compensated accordingly.

The Carrier will make this award effective forthwith.

  
William E. Fredenberger, Jr.  
Chairman and Neutral Member

  
R. O. Naylor  
Carrier Member

  
Sol A. Hammons, Jr.  
Employee Member

Dated: Feb. 26, 1990