

PUBLIC LAW BOARD NO. 4373

PARTIES	SOUTHERN PACIFIC TRANSPORTATION COMPANY)	
	(EASTERN LINES))	
TO	AND	AWARD NO. 23
DISPUTE	BROTHERHOOD OF MAINTENANCE OF WAY)	CASE NO. 27
	EMPLOYEES)	

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement when Laborer Driver E. J. Massey was unjustly suspended from service for ten (10) working days.
2. Claimant Massey shall now be paid for eight (80) hours at his respective straight time rate of pay and his personal record be cleared of the charges; this plus any compensation he may have drawn for the above dates.

HISTORY OF DISPUTE:

By letter dated December 22, 1987, Claimant, an employee with over nineteen years of service and a Laborer Driver since September 13, 1971, was assessed a ten (10) working day suspension as a result of an accident on December 21, 1987. After hearing on January 14, 1988, and by letter dated January 19, 1988, Claimant was found to have violated Rules 2243, Rules 2 and 19 of the Rules for the Safe Operation and Care of Automotive and Trailer Equipment, and Rule 5037 of the Safety Rules Governing Employees of the Maintenance of Way and Structures Department and the ten (10) day suspension was upheld.

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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.

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.

What is in issue is safety rules. We are disposed to give the Carrier broad latitude in determining responsibility for accidents. However, the record indicates that Claimant knew the door on the tool box flopped open on occasion and had a mechanic work on it, to no avail. The accident on the date in question was caused from the tool box door again flopping open, which apparently the mechanic failed to properly repair.

Close review of the record satisfies us that the Carrier's burden of demonstrating substantial evidence to support the disciplinary action has not been met. The Board finds that the accident which occurred clearly cannot be attributable to Claimant, but to defective equipment.

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We must therefore sustain the Claim. In light of the foregoing, it is unnecessary for us to address the Organization's procedural arguments.

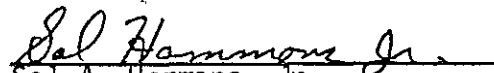
AWARD

Claim sustained. The suspension shall be rescinded and expunged from Claimant's record and Claimant shall be compensated for time lost.

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