

PUBLIC LAW BOARD NO. 4373

PARTIES	SOUTHERN PACIFIC TRANSPORTATION CO.)	
	(EASTERN LINES))	
)	AWARD NO. 5
TO	AND)	
)	CASE NO. 5
DISPUTE	BROTHERHOOD OF MAINTENANCE OF WAY)	
	EMPLOYEES)	

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement when Machine Operator John T. Bergeron was unjustly suspended from service commencing June 8, 1987, through July 22, 1987.
2. Claimant Bergeron shall now be paid for all time lost at dragline operator's rate of pay commencing Monday, June 8, 1987, through Monday, June 22, 1987, and his record cleared of all charges.

HISTORY OF DISPUTE:

At the time of the events giving rise to the claim in this case Claimant was working as machine operator assigned to Crane SP 160 with Extra Gang 200 on the Houston Division.

On April 29, 1987 Claimant and his crew were installing crossing timbers at MP 71.24 near Livingston, Texas. A timber was suspended from the crane when an inexperienced helper began to handle the timber. Without receiving a signal from the helper to lower the timber Claimant did so. The timber bounced and struck the helper on the foot injuring him.

The Carrier notified Claimant to appear for a formal investigation. By letter of June 1, 1987 the Carrier notified Claimant that as a result of evidence adduced at the investigation he had been found guilty of violating Rule 607(1) and (2) providing that "[E]mployees must not be: (1) Careless of safety of themselves or others; (2) Negligent; . . ." and Rule I requiring

employees to exercise care to prevent injury to themselves or others, to be alert and attentive at all times when performing their duties and to plan their work to avoid injury. The letter also informed Claimant that he was assessed fifteen days suspension.

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.

This case turns upon whether the helper signaled Claimant to lower the timber. Claimant testified that he received such signal, but the helper testified that he did not give it. The resolution of the credibility of the witnesses is the province of the Carrier absent evidence of abuse of discretion, and we find no such evidence in this record. The Organization attacks the testimony of the helper as inconsistent and thus unworthy of belief. Our review of the record in this case does reveal some inconsistencies in the helper's testimony. However, we feel they are not so substantial

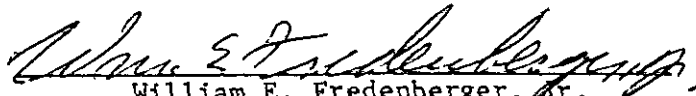
as to render his testimony unworthy of belief so as to preclude the Carrier from crediting it. Inasmuch as Claimant lowered the timber without a signal from the helper, that action alone establishes a violation of the rules as found by the Carrier.

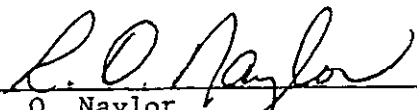
However, we believe that the measure of discipline was inappropriate. The fifteen-day suspension for the offense Claimant committed contravenes the principle of progressive discipline. We believe Claimant should have received no more than a five-day suspension, and we will modify the discipline accordingly,


AWARD

Claimant's suspension is reduced to five days. Claimant shall receive restoration of benefits and pay for all time out of service in excess of five days. Claim denied in all other respects.

The Carrier will make this award effective within thirty days of the date hereof.


William E. Fredenberger, Sr.
Chairman and Neutral Member


R. O. Naylor
Carrier Member


S. A. Hammons, Jr.
Employee Member

DATED: June 28, 1988