

PUBLIC LAW BOARD NO. 1925

Award No. 5

Case No. 5

File No. MW-76-29

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company
-Texas and Louisiana Lines-

Statement of Claim: 1. Carrier violated the Agreement when Grinder Helper E. Cortinas was unjustly dismissed, March 15, 1976.

2. Claimant Machine Operator will be now reinstated with vacation, seniority, fringe benefits and other rights unimpaired, and paid for all time lost on account of violation referred to in Part 1 of this claim.

Findings: The Board finds, after hearing upon the whole record and all evidence, that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 23, 1977, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, a Machine Operator's Helper, was working as such on March 12, 1976. He was protecting Rail Grinder SPO 254 by maintaining a lookout for trains and other track vehicles. At approximately 1:00 p.m. on March 12 said Rail Cross Grinder was struck by a freight train and totally demolished. Claimant as a result thereof was dismissed from service March 15, 1976, for

violation of Rule MM and 801 which in pertinent part provide:

"MM Carelessness by employee of the safety of others will not be condoned."

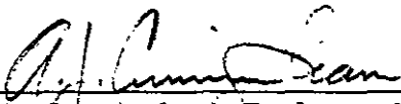
"801 Employee will not be returned in the service who are careless of the safety of others."

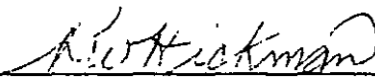
Claimant requested and was granted a hearing. Carrier as a result thereof concluded Claimant guilty as charged.

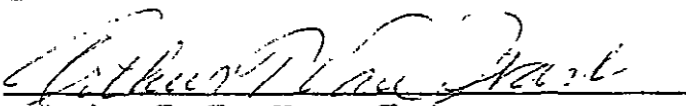
The Board finds that Claimant was accorded due process. The record reflects that sufficient probative evidence was adduced to support Carrier's conclusion that Claimant was guilty as charged.

The Board finds nothing in the record to give cause for modifying the discipline imposed. The Claim will be denied.

Award: Claim denied.


A. J. Cunningham, Employee Member


R. W. Hickman, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Falmouth, Massachusetts, September 7, 1977.