

PUBLIC LAW BOARD NO. 2439

Award No. 38
Case No. 38

PARTIES
TO
DISPUTE

Southern Pacific Transportation Company (Pacific Lines)
and
Brotherhood of Maintenance of Way Employees

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the Agreement when on December 22, 1980 it suspended Track Foreman Roger N. English from its service for a period of thirty (30) days for his alleged violation of Carrier's Rules M202 and M850, said action by the Carrier being excessive, unduly harsh and in abuse of discretion.
2. That the Claimant be compensated for all time lost, including all overtime worked on his assigned position during the thirty (30) days suspension, at the applicable Track Foreman rate and that the charges placed on his personal record be expunged therefrom."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, a Maintenance of Way Foreman, was engaged in track maintenance work with a gang in the vicinity of Martinez, California on November 13, 1980. Claimant was assigned the responsibility of providing flag protection against trains entering the work area of the westbound main track where the repair work was being done on that date. In arranging for the proper protection, he personally attended the red flag protecting entry by westbound trains to the work area. There were two operations being conducted that day, a tamping operation followed by a back hoe operation to place additional spikes and anti-rail creepers in place. The men in charge of those operations were a tamper operator on the one hand and a student foreman at the backhoe operation.

On the day in question when a train was approaching the area, Claimant communicated with first the tamper operator who notified him that his men and equipment were in the

clear and that the red flag could be removed. The student foreman, whose men and equipment were not in the clear, called Claimant on his radio and told him his men and equipment were not clear of the track. According to the record, Claimant did not verify having received that message from the student foreman and permitted the train to proceed and a serious accident was narrowly averted when the engineer observed a backhoe piece of equipment on the track. As a result of this incident, Carrier accorded the discipline indicated in the claim with respect to Claimant for his alleged dereliction on that day.

The record indicates a significant divergence in the testimony of Claimant and that of other Company witnesses with respect to the communications on the day in question. Claimant insists that he received information that the student foreman's men and equipment were in the clear and that is verified by two other witnesses. On the other hand, Carrier witnesses testified to the contrary. However, there is no dispute with respect to the fact that Claimant never acknowledged receipt of the alleged message that the equipment was in the clear. Thus, the credibility findings and that latter incident of omission by Claimant clearly justify Carrier's findings that Claimant was guilty of the charge.

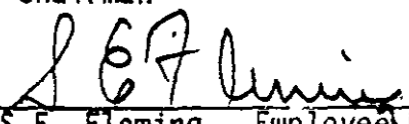
In view of the seriousness of the potential accident in this situation coupled with Claimant's record, there can be no question but that the measure of discipline imposed in this instance was appropriate and cannot be considered to be harsh, discriminatory or an abuse of discretion. For that reason, the claim must be denied.

AWARD

Claim denied.


I.M. Lieberman, Neutral-Chairman


L.C. Scherling, Carrier Member


S.E. Fleming, Employee Member

San Francisco, CA