

Org. File: 5A-81-3-DISC

Co. File: YDM-B-ORE-0-2

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2472

SOUTHERN PACIFIC TRANSPORTATION COMPANY
(Pacific Lines)

-and-

UNITED TRANSPORTATION UNION
(Switchmen)

AWARD NO. 96

CASE NO. 96

Public Law Board No. 2472 was established pursuant to the provisions of Public Law 89-456 and the applicable rules of the National Mediation Board. The parties, the Southern Pacific Transportation Company (the Carrier) and the United Transportation Union (the Organization), are duly designated carrier and organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim: "Claim is made for a day's pay at the yard rate of payment applicable for Switchmen W. C. Wilson, Jr., October 1, 1980, and for the removal of thirty (30) demerits assessed his discipline record, Salem Yard."

The Claimant W. C. Wilson, Jr., entered the Carrier's service as a Switchman on July 21, 1962.

As the result of incidents occurring on August 20, 1980, the Carrier cited the Claimant for allegedly failing to have a copy of

the Oregon Division Timetable Number 9, effective Sunday, August 3, 1980 at 12:01 a.m., in his possession as required while on duty as a Switchman in Salem Yard. It was contended that the Claimant had violated that portion of the Carrier's Rule A, which provides that employees whose duties are in any way affected by the timetable must have a copy of the current timetable and supplements, if any, immediately available while on duty.

An investigation was conducted on September 25, 1980, and the Carrier concluded that the Claimant had violated the Rule in question and accordingly a discipline of thirty (30) demerits was assessed against the Claimant's record.

This Board has reviewed the totality of the evidence submitted at the formal investigation as well as the arguments of the Organization and the Carrier.

The record of evidence in this case establishes that the Claimant was technically in violation of failing to have the appropriate timetable on his person and to have the timetable in proper order.

However, this Board is going to resolve this case on the basis of the contention made by the Organization that the Claimant was prejudged. The Assistant Terminal Superintendant testified that he told the Claimant that he, the Claimant, could accept the demerits and waive the formal investigation since

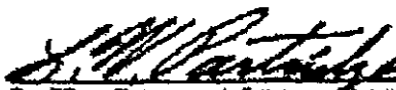
"because of the offense, one way or another there would be discipline involved."

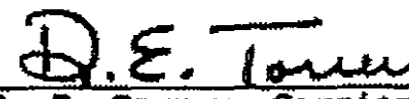
The Organization contends that this statement constituted prejudgment. The Carrier argues that as the Assistant Terminal Superintendant was merely the accusing officer and not the trier of fact, that no prejudgment existed.

We disagree with the Carrier. Holding a full investigation on the property at which all evidence and facts are to be submitted and then restricting the arbitration function to an appellate review is unique to the railroad industry. Under these circumstances it is extremely critical that the formal investigation be as "clean as a hound's tooth." Thus, even though the Assistant Terminal Superintendant was "only the accusing officer", his conveying of an impression, or be it possibly a fact, that discipline would ensue from the formal investigation, irrespective of what evidence was developed, sufficiently taints that investigation in this Board's view, as to require that the discipline be overturned.

Accordingly, the claim will be sustained.

AWARD: Claim sustained.


L.W. Partridge, Organization Member


D. E. Torrey, Carrier Member


Richard R. Kashner, Chairman and Neutral Member

April 15, 1983
San Francisco, CA