

PUBLIC LAW BOARD NO. 2556

Award No. 2

Case No. 2
File MW-179

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute: Southern Railway Company

Statement of Claim: Claim on behalf of T. M. Hagler for restoration to service with seniority and other rights unimpaired and pay for time lost subsequent to November 21, 1979 account of being dismissed for failing to perform his duties in a safe and proper manner.

Findings: The Board, after hearing upon the whole record and all evidence, finds 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 October 17, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Track Laborer was removed from service on November 14, 1978 as the result of an observation made by the Division Engineer, on November 13th, when he saw Claimant with his foot up on the ball of the rail and spiking over the rail down by his foot.

Following a formal investigation, on November 21, 1978, Claimant was dismissed for:

"Continued failure to perform duties in a safe and proper manner in compliance with Safety Rules, regulations and instructions and specifically for violation of Rules B, E, M, GR-4 and GR-13(N)."

The Board finds that Claimant was given a fair hearing.

There was sufficient evidence adduced to support the conclusions of Carrier as to Claimant culpability, including Claimant's own admissions, that he did step on the rail and spike across the rail.

The discipline assessed, in view of Claimant's record of injuries and his statement that "he tries to work safely but he cannot" is held to be reasonable. In the circumstances, this claim will be denied.

Award: Claim denied.

A. D. Arnett

A. D. Arnett, Employee Member

R. S. Spenski

R. S. Spenski, Carrier Member

Arthur T. Van Wart

Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, this 5th day of April, 1980.