

PUBLIC LAW BOARD NO. 2556

Award No. 5

Case No. 5

Parties            Brotherhood of Maintenance of Way Employees  
to                   and  
Dispute            Southern Railway Company  
Statement  
of Claim:          Claim on behalf of Machine Operator, R. Y. Wilson that  
                     he be reinstated to service with seniority unimpaired  
                     and be paid for lost time.  
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 was dismissed from service following a formal  
investigation held on February 14, 1979 as discipline for failing to  
protect his regular assignment as Operator T&S Gang 16 on June 26,  
1979 and every working day thereafter.

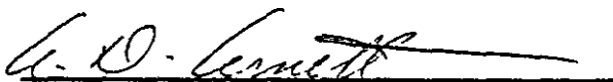
The Board finds that Claimant was accorded a fair and  
impartial hearing pursuant to Rule 40.

There was sufficient competent evidence adduced to support Carrier's conclusion as to claimant's culpability.

While the Board would not generally interfere with the discipline assessed it finds circumstances which serve to mitigate the discipline assessed. Therefore, without establishing any precedents thereby claimant will be reinstated to service on a one (1) year probationary basis with all rights unimpaired, but without pay, subject to passing the usual return to service examination. Probationary status does not remove Claimant's rights under Rule 40.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award within thirty (30) days of date of issuance shown below.

  
A. D. Arnett, Employee Member

  
R. S. Spenski, Carrier Member

  
Arthur T. Van Wart, Chairman

and Neutral Member

Issued at Washington, D.C., April 4, 1980.