

PUBLIC LAW BOARD NO. 3445

Award No. 3
Case No. 3

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

And

Southern Railway Company

STATEMENT OF CLAIM:

Foreman, W.D. McCormick, Marks Cape, 44 Ararat, Va. 24053, was suspended for 30 days for alleged violation of Rule # 1516. Employees request pay for all lost time with vacation and seniority rights unimpaired.

FINDINGS:

Claimant, at the time of the incident in question, was employed as a Foreman on Bush Hog Gang No. 551.

By letter dated December 7, 1981, Claimant was notified to attend an investigation concerning charges that he violated Operating Rule 1516 on December 2, 1981. An investigation was held on December 14, 1981. By letter dated December 22, 1981, Claimant was informed that he was being suspended for the period from December 28, 1981 through January 26, 1982, for violation of the above-cited Rule.

The issue to be decided in this dispute is whether Claimant was disciplined by Carrier for just cause under the Agreement.

The position of the Carrier is that Claimant violated Rule 1516 on the date in question and was justifiably disciplined for such violation. Rule 1516, cited by Carrier, states in pertinent part, "... When a main track switch has been lined for other on-track equipment, after movement is complete, the switch must be restored to normal position and locked". The Carrier contends that evidence adduced at the hearing established that Claimant neglected to restore the main track switch to its normal position, thereby violating Rule 1516. Specifically, Carrier cites Claimant's own testimony to support its position. The Carrier alleges that Claimant admitted that he was responsible for restoring the switch on the date in question, and that he failed to do so.

The Carrier contends that the violation of Rule 1516 was serious and could have created a disastrous situation for other trains/employees of Carrier.

The position of the Organization is that Claimant was improperly designated by Carrier as the employee to receive discipline in this case. The Organization contends that Machine Operator L. Jefferson, who worked with Claimant on the date in question, was responsible for the Rule violation. The Organization alleges that since Jefferson was the Machine Operator, it was his responsibility to ensure that the switch had been returned to its normal position.

After review of the entire record, the Board finds that a ten day suspension was the appropriate discipline.

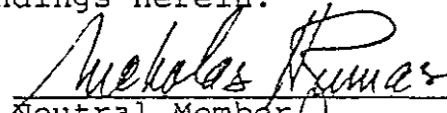
It is not the purpose of this Board to rehear an investigation that the Carrier held but only to determine if the discipline imposed was arbitrary, capricious, or an abuse of discretion.

The Carrier has established through substantial, credible evidence that Claimant violated Operating Rule 1516 on the date in question. Claimant's own testimony indicated that he neglected to make certain that the main track switch was restored to its normal position as required by Rule 1516.

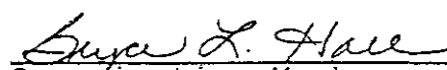
While we do not entirely agree with the Organization's position concerning Claimant's culpability, we do find that it has some merit. Although we agree with Carrier that Claimant was ultimately responsible for ensuring that the switch was restored, we find that Machine Operator Jefferson was also at fault for not restoring the switch. We, therefore, find that the discipline imposed against Claimant was excessive under the circumstances. Accordingly, the suspension must be reduced to ten days. We conclude that such a suspension is reasonably commensurate with the offense committed by Claimant.

AWARD:

Claim disposed of per Findings herein.


Neutral Member


Carrier Member


Organization Member

Date: 11/13/85