

PUBLIC LAW BOARD NO. 3558

AWARD NO. 14
Case No. 14

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TO)
DISPUTE) SOUTHERN PACIFIC TRANSPORTATION COMPANY (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of Houston Division Machine Operator J. F. Moreno for 85 hours at his straight time rate of pay and the charge letter dated February 1, 1984, removed from his record, due to him being unjustly and harshly suspended."
(MW-84-66)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee respectively within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Claimant, a machine operator, was suspended from service for 9½ work days on the basis of Carrier having adjudged him to have been careless in the operation of a tie handler (239 RW). The notice of charge had read as follows:

"On January 25, 1984, you were operating tie handler 239RW when you caused it to derail near Appleby, Texas, causing damage to tie handler. You have been found in violation of Rule M801 of the Rules and Regulations for the MofW and Structures of the Southern Pacific Transportation Company."

Rule M801, as is here pertinent, reads in part:

"Employees will not be retained in the service who are careless..."

At a company hearing Claimant stated that he had spent approximately three years on tie handlers and considered himself well-qualified to operate such machines. He also submitted at the hearing that on the date in question he was assigned as operator on Spike Gager 423, but had operated the tie handler at the request of his foreman and, further, he had been instructed by an assistant foreman to transport two kegs of spikes with the tie handler.

In rebuttal to Carrier assertions that the two kegs of spikes

could have been transported on the tie cart as opposed to Claimant having transported them in the work head (jaws) of the tie handler, Claimant contends that to have done so would have required use of new ties already strung out or placed along the right of way for installation, and their return, and would have then caused a delay to production on the date in question.

The Claimant does not deny that the spike cans, which had fallen to the tracks had caused the tie handler to derail. In this respect, when asked at the company hearing what caused the tie handler to derail, he replied:

"Spike cans caused it to derail. When moving the boom from the right hand side of the track to the left hand side with where they wanted the the spike keg to be placed or dropped."

As concerns the question of whether it was safe to have handled or transported the two kegs of spikes in the manner he did, Claimant said at the company hearing: "Yes, it is safe, to a certain extent. It's safe only if your machine is working properly." In this latter regard, asked what problems he had with the tie handler prior to the derailment, Claimant responded: "I was sitting on it with the motor running, the hydraulic turned on, and all of a sudden the machine just started to go around and around by itself."

In support of its disciplinary action, Carrier submits that Claimant had recognized the safe procedure called for ties to have been placed on the tie handler so as to make a floor on which to carry the kegs of spikes and that ties were admittedly available at the work site. The Carrier further urges that since Claimant reportedly knew from his previous operation of the tie handler that it was not functioning properly, this should have alerted him to the need to be especially careful in the operation of that particular machine, notwithstanding he was obliged to have reported the alleged problem with the machine to his supervisor.

In the circumstances of record, we think it apparent that Claimant had in fact violated Rule M801 as concerned the careless operation of a machine. The only question then becomes whether the discipline assessed was appropriate to the offense as set forth at the company hearing. In our opinion, we believe it was too severe, particularly when viewed in the light of Claimant's past record of apparently unblemished service for 13 years and in the light of a track foreman having been riding behind Claimant on a spike puller and apparently not having found need to have taken action to have determined how the spikes were being transported. In this connection, we would note it was the testimony of the foreman in response to a question that Claimant would have had to hold up several machines while he loaded ties and then loaded spikes.

For the above reasons we will hold that the discipline of 9½ work days be reduced to a suspension of 5 work days as representing fair and reasonable discipline.

AWARD:

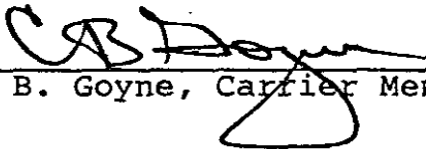
Claim disposed of as set forth in the above Findings. Discipline assessed Claimant is reduced from 9½ days to a 5-day suspension.

ORDER:

The Carrier is directed to make this Award effective within 30 calendar days of the date set forth below.



Robert E. Peterson, Chairman
and Neutral Member



C. B. Goyne, Carrier Member



M. A. Christie, Employee Member

San Antonio, TX
June 4, 1985