PUBLIC LAW BOARD NO. 3558

AWARD NO. 16
Case No. 16

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

STATEMENT OF CLAIM:

"Claim on behalf of Machine Operator N. B. Anderson for 96 hours at his straight time rate of pay and the charge of violation of company rule M801 removed from his record due to his being unjustly charged and suspended." (MW-84-82)

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.

The issue here in dispute involves determination as to whether Claimant had wrongfully failed to obey or follow instructions given him by his foreman to assist other employees in moving some cross ties. At the time in question Claimant was assigned to work as a machine operator and was an employee of the Carrier for about five years.

It is Carrier's position that although Claimant had been assigned to work as a machine operator that he could properly be required to perform the work in question, citing Section 4 of Article 17, Roadway Machines, in support of this contention. It reads:

"SECTION 4. Employees of roadway machines will be required to work with gangs under the foreman in charge and perform any work they are able to handle under the direction of the foreman when their machine is not actually being used. Machines will not be idled for the sole purpose of supplementing the force on a gang."

In application of the above rule, Carrier states it was necessary the ties be moved so as to permit the track machines to go to work and that other machine operators who had been asked to move the cross ties did as directed without question.

Petitioner maintains that Claimant had not refused to work as directed. It says he was only voicing an objection to moving the ties in an unsafe manner. In this respect, Petitioner urges that Claimant was merely trying to point out "that it would be unsafe to move the

ties with his bare hands and was sent home without an opportuntiy to get either gloves or tie tongs."

In refuting the latter contention, Carrier states that Claimant had not expressed he be given opportunity to get and use gloves or tie tongs in his refusal to help move the cross ties, and that had he done so, gloves and tongs were readily available on a maintenance of way bus at the work site.

The Board has carefully studied the transcript of investigation. This transcript reveals that it was the testimony of Claimant himself that the "entire conversation that transpired that morning" consisted of his foreman greeting him and asking him to move some cross ties and that allegedly being told upon inquiry of the foreman that he would have to move the ties with his bare hands, that he told his foreman he "was going back to [his] machine to finish serving it." Further, that this conversation with his foreman and a subsequent conversation with the foreman and the District Manager, "lasted about 90 seconds," and that he had not been given a chance to fully explain his concern that creosote on the ties would damage his hands.

As concerns Claimant's allegations that he had been told to use his bare hands, the Board notes it was the unquestioned testimony of the foreman that he only remembered Claimant having said he "wasn't going to move [the cross ties] with his hands." He did not indicate Claimant had said he was not going to move them with his bare hands.

Certainly, if the Claimant had good and sufficient grounds to believe that movement of the ties by hand, including use of bare hands, would subject him to unwarranted personal injury, he was obliged to have informed his foreman as to why he found the work to present a safety hazard. As it stands, it appears that in the purported 90-second conversation Claimant did not so express himself, but rather displayed what might be termed a rebellious attitude or intended indifference toward being required to perform other than machine operator work. Therefore, it must be concluded that Claimant had indeed refused to work as directed and thereby subjected himself to imposition of a disciplinary penalty.

AWARD:

Claim denied.

Robert E. Peterson, Chairman
and Neutral Member

C. B. Goyne, Carrier Member

M. A. Christie, Employee Member

San Antonio, TX
June 4, 1985