

PUBLIC LAW BOARD NO. 3558

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

STATEMENT OF CLAIM:

"Claim on behalf of Houston Division B&B Foreman R. M. Jefferson for 176 hours at his straight time rate of pay account being harshly and unjustly suspended from service and the discipline being excessive." (MW-85-78)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee 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.

Basically, the Claimant was alleged by the Carrier to have been negligent in not getting his push car off the track in time to prevent it being struck by a train on a bridge at MP 18.84 on March 20, 1985.

It is the Carrier's contention that Claimant had failed to afford proper flagging protection for his equipment and gang while they were engaged in the removal of panel boards and needle beams from the bridge. In this respect, the Carrier submits that Claimant had hand-held flags and torpedoes on his truck which he could have taken with him down the track and which would have provided a proper method of flagging according to the rules, but that he did not take such equipment or supplies with him. Instead, it submits that Claimant, as he testified at the company hearing, had attempted to get the attention of his gang to the approaching train when he "jumped up and down, yelled, screamed, [and] threw rocks" and waved his hat at them.

In the light of Claimant's own admissions, the only question before this Board relates to a determination as to whether or not the disciplinary penalty was harsh or unreasonable.

While Claimant is to be commended for eight years of past service without a blemish on his record, this fact alone does not give this Board the right to substitute its judgment for that of the Carrier where there is no evidence to indicate the discipline im-

posed was arbitrary and an abuse of discretion.

AWARD:

Claim denied.


Robert E. Peterson, Chairman
and Neutral Member


C. B. Goyne
Carrier Member


M. A. Christie
Organization Member

Branson, MO
May 19, 1986