

PUBLIC LAW BOARD NO. 3558

PARTIES) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SOUTHERN PACIFIC TRANSPORTATION CO. (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of San Antonio Division Machine Operator F. Landeros, Jr., for 128 hours at his straight time rate of pay and his record cleared of all charges account him being unjustly withheld from service and unjustly suspended." (MW-85-136)

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.

Under date of September 26, 1985, Claimant was working as a machine operator and operating a back hoe on the west end of the Sanderson Yard when he was informed that a train was coming. As the result of not taking timely action to clear the track the back hoe was reportedly almost hit by the train.

The record reveals that during subsequent conversation with a Carrier supervisor following this incident that the Claimant was told that the next time he is told a train is coming he was to park his machine and get off. There is some dispute as to what additional commentary took place between Claimant and the supervisor.

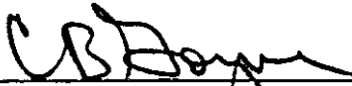
In the Board's opinion, while there is reason to believe that certain of Claimant's actions and comments represented an indifference to his assigned duties and responsibilities, we do not find, from review of the entire record, that they were of such serious nature so as to have called for Claimant to have been suspended from service to the extent as administered by the Carrier. We believe a disciplinary penalty of a 14-day calendar suspension would have been more reasonable and appropriate. We will, therefore, direct that discipline assessed be reduced to a 14-calendar day suspension.

AWARD:

Claim sustained to the extent set forth in the above Findings.



Robert E. Peterson, Chairman
and Neutral Member



C. B. Goyne
Carrier Member



M. A. Christie
Organization Member

Houston, TX
August 29, 1986