

PUBLIC LAW BOARD NO. 4373

PARTIES	SOUTHERN PACIFIC TRANSPORTATION COMPANY)	
	(EASTERN LINES))	
TO	AND	AWARD NO. 16
DISPUTE	BROTHERHOOD OF MAINTENANCE OF WAY)	CASE NO. 11
	EMPLOYEES)	

STATEMENT OF CLAIM:

1. Carrier violated the effective agreement when Track Foreman T. E. Pledger was unjustly disqualified as an I&R Foreman.
2. Claimant Pledger shall now be reinstated to his former position of I&R Foreman on Extra Gang #443 with his record cleared of alleged violations of that part of Carrier Rules 607, 1000 and 1051, in addition to the difference in pay of overtime between that of a Track Foreman and an I&R Foreman on Extra Gang #443 commencing July 20, 1987, and to run concurrently until Mr. Pledger is restored to the position of I&R Foreman.

HISTORY OF DISPUTE:

On June 18, 1987, Claimant was suspended from service for failing to detect a broken rail while working as Foreman on I&R Gang #443 on the previous day. Hearing was scheduled and held on July 9, 1987, and Claimant was suspended for a period of thirty (30) days. Additionally, he was disqualified as an I&R Foreman and allowed to exercise his seniority in accordance with the current BMW Agreement.

The Organization grieved the discipline. As the dispute remains unresolved, it is before this Board for final and binding determination.

FINDINGS:

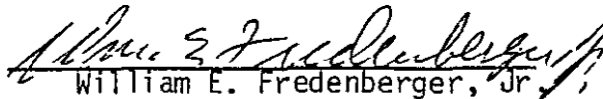
The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act, as amended, 45 U.S.C. §§151 et seq. The Board also finds it has jurisdiction to decide the dispute in this case. The Board further finds that the parties to the dispute, including Claimant, were given due notice of the hearing in this case.

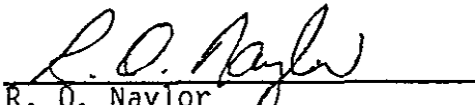
From the evidence in this case, the Carrier could reasonably conclude that Claimant should have detected the broken rail. Accordingly, we must conclude that the thirty-day suspension was justified. However, we believe that disqualification as an I&R Foreman was excessive. Therefore, the disqualification as I&R Foreman should be removed from Claimant's record.

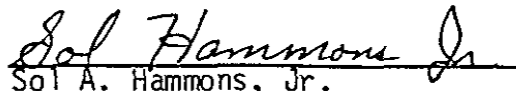
AWARD

Claim sustained to the extent that the disqualification as I&R Foreman should be removed from Claimant's record and he shall be paid the difference in pay between the position that he worked and that of an I&R Foreman from July 20, 1987, until December 1, 1987 (the effective date of his leave of absence).

The Carrier shall make this award effective forthwith.


William E. Fredenberger, Jr.
Chairman and Neutral Member


R. O. Naylor
Carrier Member


Sol A. Hammons, Jr.
Employee Member

Dated: Feb. 26, 1990