

PUBLIC LAW BOARD NO. 4373

PARTIES	SOUTHERN PACIFIC TRANSPORTATION CO. )	
	(EASTERN LINES) )	
	)	AWARD NO. 2
TO	AND	)
	)	CASE NO. 2
DISPUTE	BROTHERHOOD OF MAINTENANCE OF WAY )	
	EMPLOYEES )	

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement when Houston Division Machine Operator D. L. Gibson was unjustly suspended for the period May 8, 1987 to and including June 6, 1987.
2. Claimant Gibson shall now be paid for all time lost at dozer rate of pay for period May 8, 1987, to and including June 6, 1987, and with charge letter of May 15, 1987, removed from his personal record.

HISTORY OF DISPUTE:

At the time of the incident giving rise to the claim in this case Claimant was employed as a machine operator on the Carrier's Houston Division.

On May 6, 1987 at approximately 2:30 p.m. Claimant was operating a bulldozer near Strang, Texas. A crosstie became wedged behind the blade of the dozer. Claimant attempted to remove it and in doing so sustained a personal injury.

Claimant attempted to locate the Roadmaster on May 6 but could not do so. Claimant left work without reporting the injury. The following day he reported to work and contacted the Roadmaster. Claimant informed the Roadmaster that he had sustained a back injury. The Roadmaster requested Claimant to confirm that fact in writing. On May 8 Claimant completed a Form 2611 concerning his injury, and thereafter consulted a physician.

The Carrier notified Claimant to appear for formal investigation. By letter of June 1, 1987 Claimant was notified that as a result of the evidence adduced at the investigation he had been found guilty of violating Rule 607(1) and (2) providing that "[E]mployees must not be: (1) careless of the safety of themselves or others; (2) negligent; . . ." and Rule 806 providing in pertinent part that all on duty personal injuries ". . . must be promptly reported to officers on prescribed form." The letter also informed Claimant that he was assessed a thirty-day suspension.

The Organization grieved the discipline. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and 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.

In our opinion the record in this case contains substantial evidence supporting Claimant's guilt.

With respect to Rule 806 there is conflicting testimony as to whether Claimant actually informed the Roadmaster on May 7 that he had sustained an on-duty injury. However, the credibility of witnesses who

testify at an investigation is a determination belonging exclusively to the Carrier which will not be disturbed in the absence of evidence that the Carrier abused its discretion. The record in this case contains no such evidence. However, more central to the violation of Rule 806 is the fact that Claimant did not complete the Form 2611 concerning his injury until two days thereafter. In view of that fact we cannot conclude that Claimant reported the accident promptly, as required by the Rule.

With respect to Rule 607 Claimant admitted that he was in a twisted position at the time he attempted to free the tie and when asked what caused his injury Claimant responded "[B]eing in the wrong position at the wrong time." It is a proposition too well established to require citation to authority that a Carrier is not required to prove by independent evidence material facts which are admitted by an accused. Accordingly, we find no support for the Organization's contention that the Carrier failed to establish a violation of Rule 607 because it called no witness to substantiate that fact.

However, we believe the Organization's point that the discipline was too severe is well taken. It is fundamental that discipline must be progressive, and we believe that in this case it was not. Although, as the Carrier points out, Claimant has committed several rules violations over his nearly ten years' service with the Carrier, he has never been assessed more than demerits. While we believe the Carrier was within its prerogative to assess Claimant a suspension as progressive discipline, we think the length was excessive. We believe under the circumstances of this case Claimant should have received no more than a fifteen-day suspension.

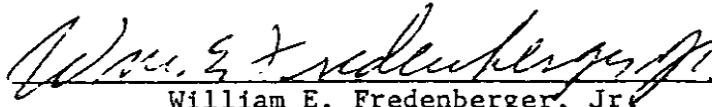
Accordingly, we will reduce Claimant's suspension by half.

AWARD

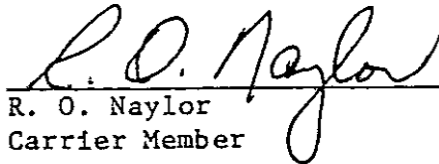
Claimant's suspension shall be reduced to fifteen days. Claimant shall receive restoration of benefits and pay for all time lost in excess of fifteen days.

Claim denied in all other respects.

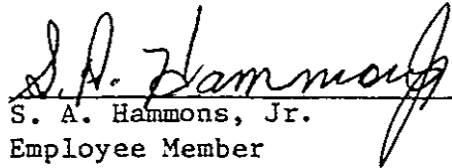
The Carrier shall make this award effective within thirty days of the date hereof.



William E. Fredenberger, Jr.  
Chairman and Neutral Member



R. O. Naylor  
Carrier Member



S. A. Hammons, Jr.  
Employee Member

DATED: June 28, 1988