

Mississippi.

It was important that these ballast trains be unloaded promptly upon their arrival for two reasons: First, they needed to keep the surfacing gang supplied to keep it moving. Second, they needed to be cycled back to the Norfolk Southern for reloading and return.

According to the testimony of the gang foreman, it was learned that the ballast train expected on that Friday morning would not be available until the next morning. He informed the Claimants that they would be needed for overtime service on Saturday, December 27<sup>th</sup> to unload the train. Claimants were also told they might be needed on Sunday as well to finish the unloading. The foreman testified that all three Claimants replied, "... that will be fine, said we do need the overtime."

The gang worked some sixteen hours on that Friday doing other work. At the end of the day, at 11:00 pm, the foreman reminded the Claimants to be back at work by 9:00 am. Only then did two of them inform him that they would not be reporting for work. The foreman warned them of consequences if they did not report.


None of the Claimants reported for work on Saturday morning. The foreman was able to secure replacement workers but the unloading process was delayed.

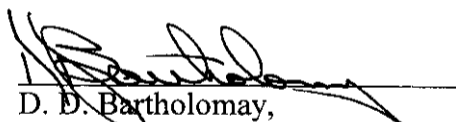
Although the testimony of the Claimants is conflicting on the point of them agreeing to perform the Saturday overtime work, our review of the record shows it to contain substantial evidence upon which the hearing officer could reasonably conclude that they had so agreed and that they violated the rules for which they were charged. Given the nature of their misconduct, serious discipline was warranted. On this record, however, we find that the penalty of dismissal should be mitigated by the unique facts of this record. The record contains evidence about the driving time between home and work, preplanned family activities during the weekend following Christmas, and a medical emergency involving the wife of one of the Claimants.


Under the circumstances, we find that Claimants' dismissals should be converted to suspensions for just cause for the time they have been out of service. They must be offered reinstatement to their previous employment, with seniority and other non-economic benefits of that status unimpaired, but without back pay.

AWARD:

The Claim is sustained in accordance with the Findings.

  
Gerald E. Wallin, Chairman  
and Neutral Member

  
D. D. Bartholomay,  
Organization Member

  
J. G. Albano,  
Carrier Member

Date: 6-12-06

**PUBLIC LAW BOARD NO. 6920**

AWARD NO. 2

CASE NO. 2

Carrier File: M0404-5820

Organization's File: KCS.MS.SRC.  
022304.33.Wicks.Young.McGill

PARTIES TO  
THE DISPUTE:

Brotherhood of Maintenance  
of Way Employees

vs.

Kansas City Southern Railway Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained in accordance with the Findings.

STATEMENT OF CLAIM:

"We are hereby submitting APPEAL in accordance with RULE 34, of the current Work Agreement between the Kansas City Southern Railroad Company, former MidSouth Rail Corporation, former South Rail Corporation and its employees represented by the Brotherhood of Maintenance of Way Employees. This appeal is concerning Director Labor and Office Administration C. L. Wright decision dated February 23, 2004. Mr. Wright disciplined employees D. Wicks, Sr., D. L. Young and L. D. McGill for alleged violation of The Kansas City Southern General Code of Operating Rules 1.1.3 and 1.15 and 1.6(3) and (4) and Rule 1.6 as revised by System Special Instructions in System Timetable No. 5 because of the formal investigation held in the Conference Room of the Kansas City Southern, 650 Childre Road, Pearl, Mississippi on February 13, 2004."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

All three claimants were dismissed for violating Carrier's rules regarding insubordination, compliance with instructions, and reporting for duty. Claimants McGill and Wicks were machine operators with some 15 years of service and 17 months of service respectively. Claimant Young was a trackman with approximately 11 months of service. The record does not establish that any of them had prior discipline entered in their service records.

Although the transcript of investigation is not free of conflicting testimony, certain facts are not in dispute. Claimants worked on Gangs 101 and 151 but were attached to Gang 109 during Christmas week in 2003 to unload ballast trains ahead of a surfacing gang. On Friday, December 26<sup>th</sup>, expected to unload another ballast train approximately 11 miles west of Meridian,