

PUBLIC LAW BOARD NO. 6920

AWARD NO. 4
CASE NO. 4

Organization File: KCS.MS.SRC.A091704.33.Thames
Carrier File: M0405-5947

PARTIES TO
THE DISPUTE:

Brotherhood of Maintenance of Way Employees

vs.

Kansas City Southern Railway Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

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's decision dated September 17, 2004 and received in this office on October 05, 2004. Mr. Wright disciplined employee D. C. Thames for alleged violation of Rule 1.1, 1.1.1, 6.3 and 116.3.3 of The Kansas City Southern General Code of Operating Rules."

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.

Claimant was assessed a 15-day suspension for violating Carrier rules regarding the fouling of track without proper protection on August 2, 2004 at Mile Post 152 near Lauderdale, Mississippi. At the time of the incident, Claimant had approximately 21 months of service. The imposition of the suspension also required Claimant to serve a 5-day suspension that had been deferred from a previous disciplinary action.

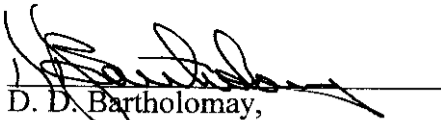
The record establishes that Claimant was the foreman of Gang 101 installing crossties in the main line. He had properly arranged for authority to occupy the track until 5:30 p.m. or until voided. At approximately 5:00 p.m., Claimant experienced difficulty contacting the dispatcher by radio. He used his cell phone to report the problem to the dispatcher. While engaged in that phone conversation, the dispatcher asked if Claimant wanted to release his track and time authority. Claimant responded affirmatively. Shortly thereafter, other members of his gang reminded Claimant that some of his track machinery was still fouling the main line. Although Claimant took immediate action to protect the machine and clear the track, the machine continued to foul the main line for several minutes thereafter. Fortunately, no train traffic entered the work area during that time.

Given the foregoing circumstances, we find the record to contain substantial evidence in

support of the Carrier's disciplinary action. Accordingly, the claim must be denied.

AWARD: The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


D. D. Bartholomay,
Organization Member


J. G. Albano,
Carrier Member

Date: 5-18-06