

PUBLIC LAW BOARD NO. 6920

AWARD NO. 5

CASE NO. 5

Carrier File: M0405-5981

Organization's File: A 02 0405
(Evans-Watkins)

**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 an appeal in accordance with RULE 34, of the agreement between the Kansas City Southern Railway Company - MidSouth Rail Corporation/South Rail Corporation (KCS-MSRC/SRC) and its employees represented by the Brotherhood of Maintenance of Way Employees (BMWE), concerning Director Labor and Office Administration C. L. Wright's decision dated February 11, 2005 to suspend from service for ten (10) days (KCS-MS/SR) employees M. Evans, Jr. And J. E. Watkins, for alleged violation of The Kansas City Southern General Code of Operating Rules 1.1 and 1.1.1;E-r(g)(q) from the Kansas City STAR book; and Rules 30.1 and 30.5.1 from the Kansas City Southern On Track Safety and Roadway Worker Rules Book as a result of an investigation held February 4, 2005 in the General Office of the Kansas City Southern, 659 Childre Road, Pearl, Mississippi."

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.

There is no dispute in the operative facts of this claim. On November 8, 2004, Claimants were assigned to pick up cross-ties along the right of way and move them to a construction site approximately 450 away. They used a multi-axle Brandt truck in its on-track configuration to do this. Claimant Evans drove the truck and Claimant Watkins operated the boom to pick up and stack ties on the truck bed between the cab and the boom mechanism. With some 42 ties stacked on the truck, the boom could not be lowered into its cradle. Nonetheless, Claimant's proceeded down the track to the construction site with the boom somewhat raised as a result. They encountered some

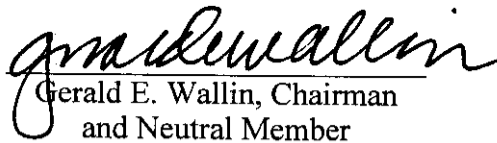
overhead communications wires and snapped off two poles causing some \$4,018.55 damage before the truck was stopped.

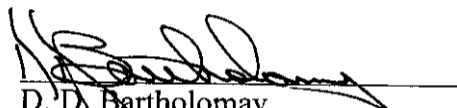
Although our review of the record reveals substantial evidence to support the Carrier's determination that applicable rules had been violated, we find that the ten day suspensions somewhat harsh in light of certain mitigating factors present. First, Claimants' previous work records of 15 and 12 years, respectively, were free of any discipline. Second, the record suggests that the overhead wires may have been strung at an abnormally low height. Finally, the notice of investigation alleges that other employees were present on the track at the time of the misconduct. However, the record shows that this was not accurate.


On this unique record, therefore, we find that Claimant's should be assessed with five-day suspensions each. This is consistent with the Carrier's disciplinary policy for first-time offenses of the kind involved here. Accordingly, each Claimant shall receive back pay compensation for the difference between the ten day suspensions served and the five-day suspensions substituted. Their work records should be modified to appropriately reflect this action.

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