

PUBLIC LAW BOARD NO. 6920

AWARD NO. 9

CASE NO. 9

Carrier File: M0406604

Organization's File: A042606.1

**PARTIES TO
THE DISPUTE:**

**Brotherhood of Maintenance
of Way Employees**

vs.

**Kansas City Southern Railway Company
(former MidSouth Rail Corporation)**

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained in accordance with the Findings

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

We are hereby submitting an appeal in accordance with Rule 34, of the agreement between the Kansas City Southern Railway Company-MidSouth Rail Corporation ... and its employees represented by the Brotherhood of Maintenance of Way Employees ... concerning the Director Labor and Office Administration, C. L. Wright's decision dated March 17, 2006 to discipline ... employee W. N. Davis, for alleged violation of the Kansas City Southern General Code of Operating Rules 1.19 and 1.6(2), as a result of an investigation held March 10, 2006 ..."

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 dismissed from service by decision letter dated March 17, 2006 as a result of his operation of a tamper eastbound at near Mile Post 84.2 on the Vicksburg Subdivision. According to the record, instead of operating his tamper to avoid damaging trackside equipment, claimant prematurely dropped his rail clamps onto scanning equipment. The detectors were torn from their supporting brackets. In addition, the rail clamps of the tamper were damaged. At the time of the incident, claimant had more than 30 years of railroad service. He also had more than 5 years of service operating the tamper in question.

Our review of the record in this matter does not reveal any procedural objections of merit.

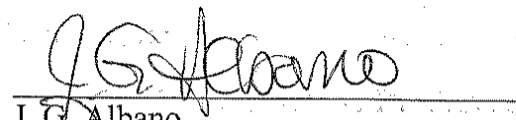
However, the unique mitigating circumstances of this record call for a modification of the discipline. Subject to successfully passing the Carrier's usual requirements for returning to work after extended absence, Carrier is directed to offer Claimant reinstatement to his former employment status with seniority and other rights associated with that status unimpaired but without back pay or other economic benefits attributed to his time out of service.

AWARD:

The Claim is sustained in accordance with the Findings.


Gerald E. Wallin, Chairman
and Neutral Member


T. Krekke,
Organization Member


J. G. Albano,
Carrier Member

Date: 5-8-08