

SPECIAL BOARD OF ADJUSTMENT NO. 1127

**AWARD NO. 14
CASE NO. 14**

**PARTIES TO
THE DISPUTE:** Brotherhood of Maintenance of Way Employees

vs.

Union Pacific Railroad Company
(Former Southern Pacific Transportation Company-Western Lines)

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

DATE: January 6, 2003

DESCRIPTION OF CLAIM:

Claimant Frederick J. Mayo was dismissed from service as an Assistant Flagging Foreman after track inspectors found him absent from his protection assignment on December 20, 2001.

The Claim in this dispute seeks to overturn the discipline and make Claimant whole for all losses.

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.

The Board's review of the hearing transcript reveals no procedural shortcomings of significance.

At the time of his dismissal, Claimant had some five and one-half years in Carrier's employ. He had three prior instances of discipline. Two did not result in lost time. The third, a 1997 drug and alcohol policy violation, reduced his service time by approximately fourteen months.

The basic facts surrounding Claimant's dismissal are not in dispute. On the day in question, he was assigned to provide protection for a contractor's crane that was working on the Milpitas Industrial Lead track near MP 12.6 of the Milpitas Subdivision. This required him to remain physically present with his red flag at all times while the crane fouled the track. After deciding that the risk of danger to the crane was remote, Claimant left his assignment to conduct personal business; he went to pay his utility bill. While gone, a team of track inspectors happened upon the scene and discovered the unprotected crane. A PUC representative hy-railling with the inspectors recommended that Carrier be cited with an FRA violation, which normally results in a monetary fine.


Claimant was aware of the applicable rules which provided for the dismissal penalty in the event of willful violations.

While the record establishes that the risk of danger to the crane was very small, and in fact

there was no actual harm, the willful nature of his violation is apparent. Indeed, Claimant admitted that he violated the rules and that he made a "horrible decision."

Under all of the relevant circumstances, we have no proper basis for concluding that the Carrier's disciplinary action was unreasonable or inappropriate.

AWARD: The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member

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