

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 290

Case No. 290

Parties to Dispute: Brotherhood of Maintenance of Way Employees and Union Pacific Railroad Company (former Missouri Pacific Railroad Company)

Statement of Claim: Carrier violated the current working agreement, especially Rule 12, when Track Machine Operator T. Moore's personal record was assessed with a 45-day actual suspension from service.

Claimant Moore should now be allowed eight hours' compensation for each work day, including any holidays falling therein beginning December 19, 1985, and continuing through February 1, 1986, and that the discipline assessed him of forty-five days actual suspension be stricken from his personal record.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement of January 5, 1959.

Claimant, on September 30, 1985, was working as a Machine Operator on Gang 5801 in the vicinity of Austin, Texas. He was operating a Spike Driver, SD-109. At approximately 2:25 PM, near the close of the day's work, a nipper cylinder broke down and a cylinder rod was severely bent. The machine had to be disassembled and repaired on the track. The Claimant notified the Work Equipment Mechanic, who promptly responded, assisted by a Mechanic's Helper and Claimant. The machine was shut down (off) while engaged in its repair.

The Tie Gang Supervisor, about 2:55 PM, aware that the Gang and this machinery were due to be cleared of the main line in approximately 10 minutes notified the Train Dispatcher that the mechanics would need approximately 30 more minutes on the live main line. He prodded the mechanics and Claimant to fix the machine as soon as possible.

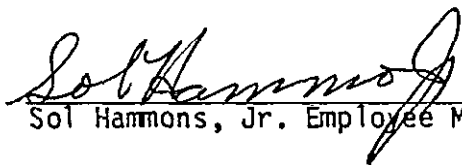
Also, about 2:55 PM as the mechanics were completing the repairs, Claimant, sitting in the Operator's seat, asserted that he heard an unidentified mechanic's voice say "start the machine." He did. However, because several hydraulic hoses had not yet been connected, hydraulic fluid gushed all over Claimant and one mechanic. They were not injured therefor.

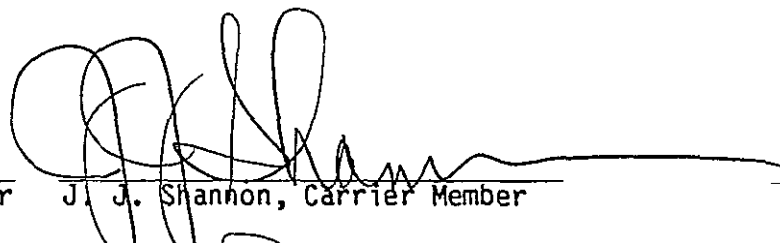
There was a conflict in the facts involving the situation as well as a discrepancy on whether Claimant was wearing his safety glasses.


The evidence offered provided support for and the basis of Carrier's conclusions. Carrier chose to believe its witnesses as opposed to Claimant's statement. Carrier's witnesses said that they heard no one say to start the machine. The Carrier also concluded that Claimant had not worn his glasses. The evidence supports such a conclusion. We find that there was no abuse of Carrier's discretion in the matter.

The discipline imposed was influenced by Claimant's previous record, i.e., five disciplinary offenses in five years, including two dismissals, one of which was for failure to operate in a safe manner. In the particular circumstances of this case, the Board is without cause to interfere with the reasonable discipline imposed. This claim will be denied.

Award: Claim denied.

  
Sol Hammons, Jr. Employee Member

  
J. J. Shannon, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued November 15, 1988.