

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 310

Case No. 310

File No. 247-7386

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

Statement

of Claim: (1) Carrier violated the current working Agreement, especially Rule 12, when Track Foreman T. W. Hammond and Machine Operators S. L. Pool and W. T. Quarton were each assessed a thirty-day suspension from service, running from February 27th thru March 28, 1986.

(2) Claimants T. W. Hammond, S. L. Pool and W. T. Quarton should now be allowed compensation for all time lost including any holidays and overtime that occurred during their suspension.

Findings: The Board has jurisdiction by reason of the parties Agreement establishing this Board.

Claimants, on February 26, 1986, were working as members of Track Gang 5147, Tamping Gangs 8109 and 8149, respectively, in the vicinity of Crane, Missouri. They concluded their days work, at approximately 3:50 PM, and proceeded to tie-up their on-track equipment, i.e., a Ballast Regulator (DDC-61) and a Tamper (ATS-53). The Track Foreman opened the Mill Track switch, which leads off the siding track at Crane, to permit the two roadway machines to enter and tie-up. Foreman Hammond, subsequently, made a telephone call and upon its conclusion he advised his men to go home.

Some 55 minutes later, at 4:55 PM, Carrier's train, NLKC-26, made a meet with southbound UMS at Crane. Train UMS arrived at Crane prior to Train NLKC-26 and the Head Brakeman lined the track for NLKC-26. He advised the crew. Train NLKC-26 proceeded to exit the main line through the opened passing track switch. Suddenly the head end crew members discovered that the Mill Track switch had been left opened and lined for movement into the Mill Track, where the road machinery was tied up. The Engineer of Train NLKC-26 threw his train into emergency. However, it was too late because the train collided with the Ballast Regulator and the Tamper causing severe damage.

The Engineer and Head Brakeman inspected the Mill Track switch. They found it undamaged with the switch lock open,

unchained to the head block, and lying between the switch ties near the switch. The switch was not spiked. Nor could the spike tag be found. After inspecting their train, the crew thereof backed the train up, lined and locked the switch on the Mill Track and proceeded through the siding to their destination, Kansas City.

Notices of a formal investigation, citing the essence of the above, were issued. The investigation was held on March 19, 1986 and was recessed in order to permit the presence of the Engineer and Head Brakeman of Train NLKC. The investigation reconvened on April 8, 1986. Carrier concluded therefrom that the Claimants were culpable, that they had violated Rule 104 and assessed the discipline here appealed.

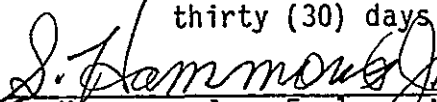
There was no error so egregious as to be cause for reversal of the discipline imposed. The right and the recognition thereof to hold Claimants out of service pending such investigation, is recognized by Rule 12 Section 1(a). While arguably it might had been more prudent to have held a joint investigation, the fact remains that the investigation that was held was consistent with Agreement Rule 12. It is noted that the cause for the delays in holding the investigation are not attributable to the Carrier. Claimants were accorded the due process to which entitled under Rule 12.

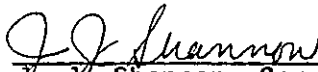
There was sufficient evidence adduced to support Carrier's conclusion as to the culpability of Track Foreman T. W. Hammond. However, there was insufficient information adduced to support Carrier's conclusion as to the culpability of Machine Operators Pool and Qarton.

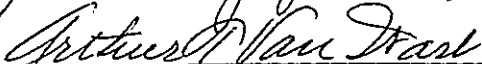
The discipline imposed when viewed in light of the seriousness of the offense and in light of the Carrier's review of the Claimant's service record, was deemed to be reasonable for the Track Foreman. However, the discipline must be reversed for the two Machine Operators.

Award: Claim of Foreman T. W. Hammond denied.  
Claims of Machine Operators S. L. Pool and W. T. Qarton are sustained.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

  
S. Hammons, Jr., Employee Member

  
J. J. Shannon, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member