

## SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 318

Case No. 318

File No. 860049G

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 Machine Operator T. E. Moore, SSN: 451-27-0896, was assessed a sixty (60) day actual suspension following a formal disciplinary investigation held on September 8, 1986.

(2) Claimant Moore shall now be allowed eight (8) hours pay for each work day, including any holidays, for the sixty days actual suspension assessed.

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

Claimant, on May 13, 1986, was working and operating Roadway machine BDC-18. He operated it in transit from the vicinity of Willis point, enroute to Mesquite, Texas. The Claimant's machine was in the middle of a convoy with the machine DBS-2 in the lead and machine ATP-142 in the rear. The Claimant's machine was radio equipped. Because he had the communication capability the Claimant arranged for track and time from the Train Dispatcher from Willis Point to Lawrence, Texas. He shared responsibility for the movement with the Foreman of Gang 5475, R. D. Boger. Claimant was responsible for the safe movement of the lead machine, DBS-2, and his own machine, BDC-28, while the Foreman took responsibility for machine ATP-142.

Said convoy encountered several grade crossings while passing through the town of Terrell, Texas. Machine DBS-2 and BDC-28 stayed within a couple of hundred yards of each other. However, Machine ATP-142 lagged behind some 3/4 of a mile. The Trackman attached to the convoy hopscotched from crossing to crossing in order to attempt to flag the crossings.

The machines under Claimant's responsibility, i.e., DBS-2 and his own BDC-28, out ran such flag protection at the Hattie Street crossing. Machine DBS-2 proceeded across the Hattie Street crossing without incident. Claimant's machine, moving about 4-5 miles per hour in a westward direction, was approximately 6 poles back. A 1979 Mercury

Capri entered the grade crossing a moment or two prior to Claimant's machine entering and a collision occurred therewith at approximately 2:24 PM. The driver of the car told Claimant and the Foreman, as well as the Terrell police officers who arrived on the scene, that he was in a hurry and tried to beat the Roadway machine to the crossing.

As a result of the incident, a formal investigation was formally held on September 8, 1986 on the charge:

"The alleged report that you failed to properly flag crossing at Hattie Street, Terrell, Texas which resulted in a collision with vehicle...."

The Carrier concluded therefrom that Claimant failed to operate the roadway machine in conformity with the rules, and that he was responsible for the collision between machine BDC-28 and the automobile at the Hattie Street crossing on May 13, 1986. The Claimant was given a 60 day actual suspension on September 16, 1986.

Claimant was accorded the due process to which entitled under Rule 12.

There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability.

The discipline imposed as between Road Foreman Boger and the Claimant differed. However, such difference reflected a proper application of a policy of fair and reasonable discipline. As pointed out by Judge Johnson in Third Division Award No. 9637:

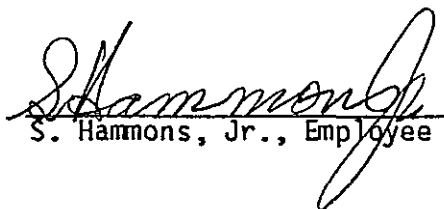
"It has been held by this division that discipline cannot be measured on a statistical basis in comparison with other infractions. Awards 1310 and 9034. This is necessarily so since each case must be decided on its own facts. While it was held in Award 177 that the measure of discipline imposed in similar violations is one factor to be considered in determining whether the discipline in any particular case was reasonable. Yet that consideration cannot be the sole criterion, as assumed by the Claimant."

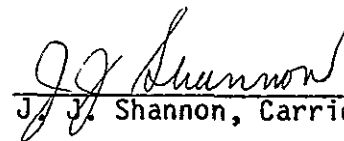
The degree of discipline to be imposed involves a complex determination. The factors generally considered, but which are not limited to, are who was primarily at fault, an employee's length of service, a good or bad prior discipline record, the relationship thereof to the incident for which discipline is being imposed, the candor of the witness.


The factors involving Foreman Boger clearly are different than those involving Claimant. Claimant, clearly, was responsible for his own machine. He did admit that he was aware that flag protection was not at the Hattie Street crossing. The improper actions of the automobile driver did not serve to exculpate the Claimant. The Claimant had an obligation to comply with Carrier's rules governing the operation of the motor cars and see that the machines were properly protected by flag protection.

In the circumstances, the discipline imposed is deemed reasonable. This claim will be denied.

Award: Claim denied.

  
S. Hammons, Jr., Employee Member

  
J. J. Shannon, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued June 13, 1989.