

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES ) BROtherHOOD OF MAINTENANCE OF WAY EMPLOYEES  
TO )  
DISPUTE ) ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

"1. Carrier violated the effective Agreement when South of Texarkana Foreman A. Fisher was unjustly dismissed from service, and later reduced to a thirty (30) calendar day suspension.

2. Claimant Fisher shall now be paid for all time lost, commencing January 15, 1985, and continuing until restored to service with seniority, vacation and all other benefits restored intact, and his record cleared of all charges." (MW-85-22-Fisher; 53-811)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

While working as an I&R Foreman on January 7, 1985, Claimant had been involved in a motorcar derailment near Waco, Texas, which also involved two employees working under his direct supervision.

It is the Carrier's contention that testimony adduced at a company investigation supports the conclusion that Claimant had been in violation of Rule "M" of Carrier's Rules and Regulations for Maintenance of Way Employees in not having provided for the completion of required injury reports without delay and for having misrepresented to his immediate superior on January 8, 1985, that no one had been injured as a result of the derailment, when in fact personal injury forms were thereafter submitted to the Carrier for injuries sustained in the derailment.

The Organization, on behalf of Claimant, maintains that since the gang did not return to their headquarter's point until after 3:30 P.M. that Claimant did not report the derailment to his immediate superior until the following morning owing to the minor nature of the injuries and the fact that no one would be in the office at that time of day.

The Organization also submits, as Claimant stated at the company hearing, that Claimant had given the two employees copy of the accident reports to fill out, but that they had told him they

would fill them out and return them to him on January 8th. Further, that contrary to testimony of his immediate superior, Claimant stated the personal injuries had been reported to his superior during their conversation on the morning of January 8th.

While the Board is unable to resolve the conflict in testimony as concerns whether the injuries were reported during the conversation of January 8th, we think it may be properly concluded that Claimant had not in fact been in proper compliance with Rule "M" in the manner by which he handled report of the accident. The derailment had occurred at 11:15 A.M. on January 7, 1985, and, as Claimant stated at the company hearing, he was immediately aware of personal injuries having been sustained by the two employees who were working under his supervision. He should therefore have insisted that the employees immediately complete the required forms and should not have consented to their desires to withhold submission of the required reports until the following work day. It would also seem to the Board that Claimant should have made a more timely report of the incident to his superiors, and not have waited until January 8th to bring the matter to the attention of his immediate superior. Moreover, the record shows that when asked at the company hearing whether he felt he had complied with the provisions of Rule "M", the Claimant's reply was, "No."

Under the circumstances, while the initial penalty of dismissal may be viewed as having represented harsh and unreasonable discipline, the Board has no reason to hold that imposition of a 30 calendar day suspension was, as the Organization urges, unjust and extremely excessive administration of discipline.

AWARD:

Claim denied.



Robert E. Peterson, Chairman  
and Neutral Member



R. O. Naylor  
Carrier Member



M. A. Christie  
Organization Member

Houston, TX  
August 29, 1986