

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 397
Case No. 397
File No. 880521

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute: Union Pacific Railroad Company
(Former Missouri Pacific Railroad Company)

**Statement
of
Claim:**

"Carrier violated the Agreement, especially Rule 12, when Section Foreman R. W. Tibbetts was assessed a sixty (60) day actual suspension during the period June 13 through August 16, 1988.

Claim in behalf of Mr. Tibbetts for eight hours each work day, including any holidays during the above period."

Findings:

The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated January 5, 1959, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

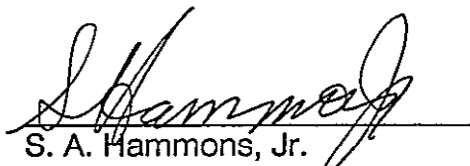
A review of the record in this case reveals that Claimant Tibbetts was afforded a fair and impartial hearing.

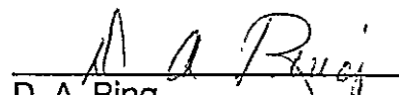
However, the Board does not find compelling evidence on this record that Claimant was any more culpable than Track Inspector Curtis for their mutual failure to have the subject track "slow ordered" pending repairs. There can be no doubt that both Messrs. Tibbetts and Curtis imprudently "assumed" that the other had taken the safe course when, in fact, neither did. Track Inspector Curtis' testimony, at the resulting investigation, that he initially discovered the defect and that he had informed the operator that the defect was not serious enough to warrant a slow order undermines the Carrier's culpability decision in this case.

In light of all the circumstances obtaining, the Board will set aside the sixty (60) day suspension assessed Claimant on June 22, 1988 and direct that he be made whole for any wage loss suffered.

Award: Claim sustained as per findings.

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


S. A. Hammons, Jr.
Employee Member


D. A. Ring
Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued on the 10 day of November, 1989
at Orlando, Florida.