

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 572

Case No. 572

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

Statement
of Claim: (1) Carrier violated the Agreement, especially Rule 12,
 when R. D. Newton was assessed 30 days actual suspension.

 (2) Claim in behalf of Mr. Newton for wage loss suffered
 September 23 - October 23, 1991.

Findings: The Board has jurisdiction of this dispute by reason
 of the Parties Agreement establishing this Board therefor.

 The Claimant, R. D. Newton, a Track Foreman since
January 7, 1991, was notified under date of July 23, 1991
that a formal investigation would be held July 30, 1991 on
the charge:

"On Thursday, July 18, 1991, while working as Track Foreman
on Gang 9386 in the vicinity of Greenfield, Arkansas on the
Wynne subdivision you allegedly failed to properly display
the Form B Track Bulletin stop order flags per instructions
of Track Supervisor R. D. Purtle."

 The hearing was held August 22, 1991. The Carrier
concluded therefrom that the Claimant was culpable. He was
assessed a thirty (30) day actual suspension.

 The Board finds that Claimant was accorded the due
process to which entitled under the discipline rule. That
he was removed from service pending investigation was not
inconsistent with the agreed upon right stated in Rule 12 to
remove an employee from service. This was a serious case.

 There was sufficient evidence adduced to support the
Carrier's conclusion that the Claimant was culpable of the
charge placed against him. That decision, however, in light
of all of the facts, does seem to have been somewhat
arbitrarily reached. On the date of the incident, there
were two gangs working together, one, a tie gang on the
south end and the other, a surfacing gang on the north end.
The Claimant was the Foreman of the north end surfacing gang
(9156) and Foreman Jones had the tie gang (9166) on the
south end. Both gangs were under the Supervision of Track
Supervisor R. D. Purtle, who testified that he instructed

each Foreman to take care of his end of the stop order. The Form B Track Bulletin (Stop Order) was obtained by Foreman Jones the previous evening. Said stop order, when effective, permits the gangs to occupy the main track (from 6:00 AM to 10:00 AM). Its implementation requires that stop signs be erected, red and green, for southbound trains at MP 252 and red and green governing northbound trains. Also that a red-yellow should be displayed two miles in advance of such sign at MP 250. The stop order, which was in effect from 6:00 AM to 10:00 AM, required that said stop signs be in place at least 30 minutes before the gang went to work. No such signs were displayed on the north end at MP 252 on August 18th. Foreman Jones got the order number and permit at 5:45 AM. He tried to contact Foreman Newton but was unsuccessful. Foreman Newton was tied up from 5:35 AM to 7:30 AM with Truck Driver Jackson trying to jump start a fuel truck, some 26 miles away. Track Supervisor Purtle apparently picked up the order number.

MTM, Tom Chapman, who was making an audit, advised Track Supervisor R. D. Purtle about 8:00 to 8:15 AM and again about 1 hour later, that no flags were displayed. Purtle called Foreman Newton on the radio and they met on a highway crossing. Purtle told Newton that the signs were not up, that they needed to get them up. Foreman Jones of the tie gang was tied up at Harrisburg, while Newton and his surfacing gang were tied up in Greenfield some 5 miles apart. Everyone testifying, except Assistant Foreman Davis, testified that the Assistant Foreman is in charge when the Foreman is absent, that Davis was previously so instructed, which he denied. Davis' testimony was opposite to the Claimant's.

The Board is not concluding that the Claimant was not culpable of the charge. Nor that the failures of others should serve to exculpate the Claimant. However, this case involves an application of a rule designed to provide safety. It is viewed as a safety case. The transcript reflects a scene of the actors failing in such manner as to provide potential cause for a tragic incident to occur contrary to the total purpose and design of the rules alleged to have been violated. It appears, in effect, that everyone wants to have a say in the cooking of the chicken, everyone wants to eat it, but no one wants to be responsible for the cooking or the chicken.

Both gangs were directly supervised by Track Supervisor Purtle. Foreman Jones says that he checks the Form B every evening and following morning and then communicates. Foreman Jones on July 18th obtained the track and time permit at 5:45. The rule says that a stop order board ought to be placed 30 minutes before the gang(s) goes to work.

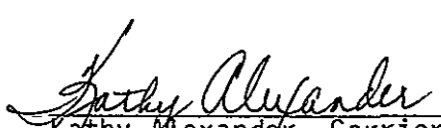
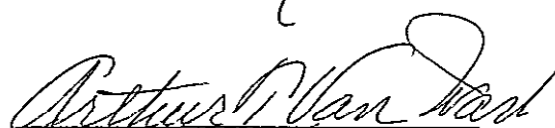
However, the Claimant was nowhere near the job site at 5:30 or 6:00 AM. He was attempting to get a fuel truck started in Harrisburg about 5:40 AM. Newton as did Purtle and Jones, said that Vince Davis, the Assistant Foreman, is in charge when the Foreman is not there and that he should have put the boards up because he had spoken to him about that previously. Davis denied that.

The Board believes that this capsulized version of the problem should have been considered when determining who should be investigated and when assessing the discipline. The 30 days suspension in light thereof appears excessive when the discipline was only imposed on a single person for the purpose of what appears as getting to the "next case."

Consequently, the discipline will be reduced to five (5) days suspension and the Board trusts that such Board action will cause the Carrier to do something to correct and assure the integrity of a system designed to prevent incidents or accidents occurring but whose implementation here leaves strong doubt as to a proper implementation. A question for the Carrier's consideration is whether a bifurcate system of implementation provides integrity to a system designed for protection of operations?

Award: Claim disposed of as per findings.

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

 S. A. Hammons, Jr., Employee Member	 Kathy Alexander, Carrier Member
 Arthur T. Van Wart, Chairman and Neutral Member	

Issued May 22, 1993.