

SPECIAL BOARD OF ADJUSTMENT NO. 280

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

STATEMENT OF CLAIM

1. The Carrier violated the effective Agreement when North of Texarkana Foreman A. P. Clark was unjustly suspended from service (System File MW-87-58-CB/465-80-A).
2. Claimant Clark shall now be paid for all time lost beginning July 7, 1987, and continuing through September 4, 1987, and with charge letter dated July 7, 1987, removed from his personal record.

OPINION OF BOARD

As a result of charges dated July 7, 1987, investigation eventually held on July 21, 1987 and by letter dated July 29, 1987, Claimant, a track foreman, was suspended for 60 days for being careless.

On July 6, 1987 while in charge of changing of a defective rail near Fair Oaks, Arkansas, rather than using a boom truck, a welder to destress the rail or through use of a truck jack (all of which were options available to Claimant at the time), Claimant attempted to pry up the defective rail. During the process, the rail, which was under heat stress, jumped out of its bed knocking Claimant to the ground further resulting in a personal injury to Claimant.

A laborer at the scene of the incident testified that the procedure used by Claimant "might have been a little unsafe" Claimant testified that he was aware that a rail under stress could react in an unusual fashion; he used the prying method that day "because it works a little faster; he "was not under pressure from the dispatcher" to get the track back in service; other safer methods existed than removing the rail through prying; and there was enough track and time available to bring in a welder's truck to cut the rail or a boom truck

to lift the rail.

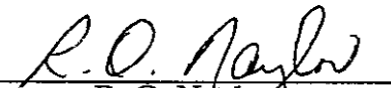
We find that substantial evidence supports the Carrier's conclusion that under the particular given conditions that existed on July 6, 1987 and the existence of other safer alternatives that were present and available for Claimant as foreman in charge to use for removing the defective rail, Claimant was careless as charged in the manner he chose to remove the defective rail. Under the circumstances, we cannot say that a 60 day suspension was either arbitrary, capricious or excessive.

We have considered the Organization's other arguments and find them to be insufficient to change the result.

AWARD

Claim denied.


Edwin H. Benn
Neutral Member


R. O. Naylor
Carrier Member


S. A. Hammons, Jr.
Organization Member

Houston, Texas
June 11, 1990